FILE COPY

PETITION NOT PRINTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 176

LEONARD SALDANA, PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 16, 1960

CERTIORARI GRANTED JUNE 27, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 176

LEONARD SALDANA, PETITIONER,

VS.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

February, 1958, Grand Jury

UNITED STATES OF AMERICA, Plaintiff,

v.

ALBERT ARROYO PALOMINO, LEONARD SALDANA, Defendants

No. 26878-CD

INDICTMENT

(U.S.C., Title 21, Sec. 174—Conspiracy to sell, sale of narcotics)—Filed and Endorsed June 11, 1958

The grand jury charges:

Count One

(U.S.C., Title 21, Sec. 174)

Prior to April 28, 1958, and continuing to the date of the return of this indictment, the defendants Albert Arroyo Palomino and Leonard Saldana agreed, confederated and conspired together to commit offenses against the United States, as follows: to receive, conceal, sell, and facilitate the transportation, concealment and sale of narcotic drugs in violation of United States Code, Title 21, Section 174.

The objects of said conspiracy were to be accomplished as follows: defendant Albert Arroyo Palomino would acquire heroin and would furnish the same to the defendant Leonard Saldana; the defendant Saldana would make arrangements with persons in the Los Angeles and Orange County areas to sell said heroin to said persons and would [fol. 3] receive money in exchange for said heroin.

To effect the objects of said conspiracy the defendants herein committed divers overt acts in the Central Division

of the Southern District of California and other places, among which were the following:

1. On April 28, 1958, the defendant Leonard Saldana delivered 1 ounce, 423 grains of heroin to Jayme Licuanan at 445 South McBride Street, Los Angeles, California, and received $400.00 in return therefor.

2. On May 7, 1958, the defendant Leonard Saldana delivered 1 ounce, 32 grains of heroin to Jayme Licuanan at 445 South McBride Street, Los Angeles, California, and received $200.00 in return therefor.

3. On May 21, 1958, the defendants Albert Arroyo Palomino and Leonard Saldana delivered 10 ounces 339 grains of heroin to Jayme Licuanan and Victor Segura at 445 South McBride Street, Los Angeles, California.

Count Two

(U.S.C., Title 21, Sec. 174)

On or about April 28, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Albert Arroyo Palomino and [fol. 4] Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan of 1 ounce, 423 grains of heroin, a narcotic drug, which, as the defendants then and there well knew, had been imported into the United States of America contrary to United States Code, Title 21, Section 174.

Count Three

(U.S.C., Title 21, Sec. 174)

On or about May 7, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Albert Arroyo Palomino and Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan of 1 ounce, 32 grains of heroin, a narcotic drug, which, as the defendants then and there well knew, had been imported into the United States of America contrary to United States Code, Title 21, Section 174.

Count Four

(U.S.C., Title 21, Sec. 174)

On or about May 13, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Albert Arroyo Palomino and Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan of 1 ounce, 7 grains of heroin, a narcotic drug, which, as the defendants then and there well knew, had been imported into the United States of America contrary to United States Code, Title 21, Section 174.

[fol. 5] Count Five

(U.S.C. Title 21, Sec. 174)

On or about May 21, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Albert Arroyo Palomino and Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan and Victor Segura of 10 ounces, 339 grains of heroin, a narcotic drug, which, as the defendants then and there well knew, had been imported into the United States of America contrary to United States Code, Title 21, Section 174.

A True Bill.

Robert E. Battles, Foreman.

Laughlin E. Waters, United States Attorney.

[fol. 6] In United States District Court

Minute Entry of Arraignment and Plea—June 16, 1958

U.S. Atty. by Assistant U.S. Atty: T. Conrad Judd, Esq.
Counsel for Defendant Jack Tenner, for Palomino.
Counsel for Deft. Saldana: Stephen Reinhardt, Esq. appointed.
Defendants both present in custody.

Proceedings: Arraignment and Plea.
Each defendant duly arraigned and states true name as charge.

Each defendant pleads not guilty to Counts 1, 2, 3, 4 & 5.

On motion of defendants' attorneys, It Is Ordered that bail be reduced to $10,000.00 for each defendant.

It Is Further Ordered that jury trial (estimated to last 2½ days) be set before the Hon. Peirson M. Hall at 10 a.m., July 15, 1958.

[fol. 7] In United States District Court

Minute Entry re Withdrawal of Not Guilty Plea and Entry of Plea of Guilty to Counts 1 and 2—June 26, 1958

U.S. Atty, by Assistant U.S. Atty: Thos. R. Sheridan.
Counsel for Defendant Stephen Reinhardt (appointed).
Defendant present in custody.

Proceedings: For hearing motion of defendant Leonard Saldana to withdraw plea heretofore entered.

Attorney Reinhardt makes a statement that defendant Leonard Saldana desires to change his plea to counts 1 and 2 of the Indictment. It is so ordered.

With permission of the Court Defendant Saldana withdraws plea of not guilty, heretofore entered, to counts 1 and 2 of the Indictment and now pleads guilty to counts 1 and 2.

Counsel waive probation report.

It Is Ordered that cause as to Defendant Saldana is continued to July 21, 1958, 2 PM, for sentence on counts 1 and 2, and disposition of counts 3, 4 and 5.

[fol. 8] In United States District Court

Minute Entries of Continuances—July 9, 1958

Proceedings: (Ex parte) (Trial now set for July 15, 1958).

Attorney for defendant moves for continuance of trial now set for July 15, 1958.

It Is Ordered that trial is continued to July 29, 1958, 10 a.m.

It Is Ordered that co-defendant Saldana is transferred before this Court for sentence.

[fol. 9] IN UNITED STATES DISTRICT COURT

On the Court's own motion, It Is Ordered that cause as to said proceedings is continued to July 22, 1958, 10 AM.

[fol. 10] IN UNITED STATES DISTRICT COURT

It Is Ordered that cause is continued to July 24, 1958, 10 AM, for sentence.

[fol. 11] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF COURT'S ORDER WITHDRAWING PLEA OF GUILTY TO COUNTS 1 AND 2 AND RE-ENTRY OF PLEA OF NOT GUILTY—July 29, 1958

For sentence of Defendant Saldana on counts 1 and 2, and further proceedings as to counts 3, 4 and 5 of the Indictment in five counts.

It Is Ordered that trial is vacated as to Defendant Palomino, that bond of said defendant is forfeited, and that a bench warrant issue for Defendant Palomino.

Counsel makes statement as to Defendant Saldana.

On the Court's own motion It Is Ordered that plea of guilty, heretofore entered by defendant Saldana to counts 1 and 2 is withdrawn, and that plea of not guilty as to said defendant to all five counts of the Indictment is entered.

It Is ordered that cause as to Defendant Saldana is set for trial Aug. 5, 1958, 10 A.M.

[fols. 12-13] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY DENYING OFFER OF PLEA OF GUILTY TO COUNTS 1 AND 2—August 1, 1958

Proceedings: For change of plea of Defendant Saldana.

Motion to transfer this case to Judge Clarke is denied.

Offer of plea of guilty by defendant Saldana to counts 1 and 2 of the Indictment is denied.

[fol. 14] IN UNITED STATES DISTRICT COURT

DEFENDANT'S PROPOSED INSTRUCTION RE ENTRAPMENT

Entrapment. Refused as covered.

The defense has attempted to show that the defendant was entrapped into committing the offenses charged in the indictment. Entrapment is a defense which, if, you find it to be established under the rest of my instructions, entitles the defendant to a verdict of not guilty. In fact, if you find that the defendant was entrapped, you must return a verdict of not guilty and I hereby instruct you to do so.

Entrapment means that the scheme of the crime originated in the mind or minds of the government agent or government informants and that the defendant not having a previous intention to commit offenses of the kind here involved, was induced to engage in the course of such criminal activity by government agents. Entrapment is not established merely by a showing that the government agent asked the defendant to secure narcotic drugs. For if the defendant was willing to commit the offense in any event, then the Government's request cannot be said to be the inducement. But unless the Government has established that the defendant was ready and willing to engage in the traffic charged prior to the request by the Government agent, the defense of entrapment is applicable. ~~For the law does not permit the Government to approach a citizen who does not contemplate committing an offense and entice that citizen into violating the law. Under these circumstances a defendant must be acquitted.~~

[fols. 15-21] In the present case there are four separate offenses charged. If you find that the defendant was entrapped into committing the first offense, then you must return a verdict of not guilty as to that count. If you further find that the four separate sales charged all stemmed from the initial conversations with the Government agent and were part of a common scheme then you must acquit the defendant on all counts. If on the other hand you find no entrapment as to the first sale, then the defendant is shown to have been ready and willing to commit these offenses and there can be no defense of entrapment as to the last three counts.

Filed and endorsed Aug. 5, 1958.

[fol. 22] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 26,878-CR. 5 Cts. (Count I heretofore disposed of)

UNITED STATES OF AMERICA,

v.

LEONARD SALDANA

JUDGMENT AND COMMITMENT—August 18, 1958

Age 34

On this 18th day of August, 1958 came the attorney for the government and the defendant appeared in person and by Stephen Reinhardt, his counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of knowingly and unlawfully selling and facilitating the sale of heroin, a narcotic drug, which said defendant then and there well knew had been imported into the United States contrary to law, and in violation of Section 174 of Title 21, United States Code, as charged Cts. II, III, IV & V of the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years on Count V; five (5) years on Count IV, to run con-
[fol. 23] secutive to and not concurrent with the sentence imposed on Count V; five (5) years on Count III, to run consecutive to and not concurrent with the sentences imposed on Counts IV and V, or a total of twenty (20) years; imposition of sentence on Count II is suspended, and the defendant is placed on probation for the period of five (5) years to begin after release from service of sentences imposed on Counts III, IV and V, on condition that he will not violate any law, and will report to the Probation Officer

of the District of his residence every thirty (30) days, unless excused therefrom in writing.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Peirson M. Hall, United States District Judge.

Filed and endorsed August 18, 1958.

[fol. 24] In United States District Court for the Southern District of California, Central Division

No. 26,878-Crim. 5 Cts. Ct. 1 htf, disposed of.

United States of America,

v.

Leonard Saldana

Corrected Judgment and Commitment—August 25, 1958

Heretofore on the 18th day of August, 1958, came the attorney for the government and the defendant appeared in person and by Stephen Reinhart, his counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of knowingly and unlawfully selling and facilitating the sale of heroin, a narcotic drug, which said defendant then and there well knew had been imported into the United States contrary to law, and in violation of Sec. 174 of Title 21, United States Code, as charged in counts 2, 3, 4, and 5 of Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10)

years on Count V; five (5) years on count IV, to run consecutive to and not concurrent with the sentence imposed [fol. 25] on count V; five (5) years on count III, to run consecutive to and not concurrent with the sentences imposed on counts IV, and V, or a total of twenty (20) years; imposition of sentence on count II is suspended, and defendant is placed on probation for the period of five (5) years to begin after release from service of sentence imposed on counts III, IV, and V. Now on this 25th day of August, 1958, came the U.S. Attorney, and the defendant appeared in person and by Stephen Reinhart, his counsel,

It Is Adjudged that the judgment and sentence imposed on count II is vacated and set aside, and the defendant is sentenced to the custody of the Attorney General for a period of five (5) years on count II to run concurrent with and not consecutive to the sentence heretofore imposed on Count III.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Peirson M. Hall, United States District Judge.

Filed and endorsed August 25, 1958.

[fol. 26] In United States District Court for the Southern District of California, Central Division

[Title omitted]

Notice of Appeal—Filed August 25, 1958

Name and address of appellant:

Leonard Saldana, 445 South McBride Street, Los Angeles, California.

Name and address of appellant's attorney:

Stephen Reinhardt, 433 South Spring Street, Los Angeles, California.

Offense:

Section 174 of Title 21 of the United States Code. It [fols. 27-36] is charged that defendant knowingly and unlawfully sold and facilitated the sale to Jayme Lienanan

of certain amounts of heroin, a narcotic drug which as the defendant then and there well knew had been imported into the United States of America contrary to law.

Concise statement of judgment or order:

Judgement of conviction dated August 18, 1958 and August 25, 1958 under Counts Two, Three, Four and Five of the indictment. Defendant sentenced to ten years on Count Five, five years on Count Four, five years on Count Three, each and every sentence to run consecutively and not concurrently. Defendant also sentenced to five years on Count Two to run concurrently with the sentence on Count Three. Defendant is now confined in the Los Angeles County Jail.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

/s/ Leonard Saldana, Stephen Reinhardt, Attorney for Appellant, Leonard Saldana.

Dated: August 25, 1958.

Filed and endorsed August 25, 1958.

[fol. 1] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Thurmond Clarke, Judge Presiding

No. 26,878—Criminal

UNITED STATES OF AMERICA, Plaintiff,

vs.

ALBERT ARROYO PALOMINO, LEONARD SALDANA, Defendants

Reporters' Transcript of Proceedings on Arraignment and Plea—June 16, 1958

APPEARANCES:

Attorneys for Plaintiff, United States of America: Laughlin E. Waters, United States Attorney, Lloyd F. Dunn, Assistant United States Attorney, Chief, Criminal Division, by T. Conrad Judd, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California, Telephone: MAdison 5-7411;

[fol. 2] Attorney for Defendant, Albert Palomino: Jack Tenner, 6535 Wilshire Boulevard, Los Angeles 48, California, Telephone: Olive 3-5141;

Counsel for Defendant, Leonard Saldana: Stephen Reinhardt, 433 South Spring Street, Los Angeles 13, California, Telephone: MAdison 4-2611.

[fol. 3] Los Angeles, California, Monday, June 16, 1958, 9:30 A.M.

(The court hears other matters.)

The Clerk: No. 3 on the calendar, case No. 26,878, United States of America vs. Albert Arroyo Palomino and Leonard Saldana.

Albert Arroyo Palomino, is that your full, true name, sir?

Defendant Palomino: Yes.

The Clerk: Is Leonard Saldana here?

Defendant Saldana: Yes.

Mr. Tenner: I am just appearing for the defendant Palomino.

The Clerk: For Palomino only?

Mr. Tenner: Yes.

The Clerk: Is that your full, true name, Leonard Saldana?

Defendant Saldana: Yes, it is.

The Clerk: You are informed that you are in the United States District Court; that an Indictment has been filed charging you with violation of the laws of the United States. Mr. Saldana, I hand you herewith a copy of the charges.

Mr. Tenner, you have received a copy of the charges, for Palomino.

Mr. Tenner: Yes, sir. I have.

[fol. 4] The Clerk: You are entitled to trial by a jury and to be represented by an attorney. Mr. Saldana, do you have an attorney?

Defendant Saldana: I haven't.

The Clerk: You have not?

Mr. Tenner: Speak up.

Defendant Saldana: I haven't got an attorney.

The Court: Do you want the court to appoint an attorney? You better have an attorney. I will appoint Stephen Reinhardt. You can go over there and talk to him.

Do you want to take the plea of the other defendant?

Mr. Tenner: We can take our plea right now.

The Court: All right.

Mr. Tenner: Waive reading of the Indictment.

The Court: What is the plea?

The Clerk: As to Count One, Mr. Palomino, what is your plea, sir?

Defendant Palomino: Not Guilty.

The Clerk: And as to Count Two?

Defendant Palomino: Not Guilty.

The Clerk: And as to Counts Three, Four and Five?

Defendant Palomino: Not Guilty.

The Clerk: All. Trial time?

Mr. Judd: Approximately two and a half days, your Honor.

The Court: Mr. Reinhardt, if you want to enter a Not [fol. 5] Guilty plea for the other defendant, we might as well. Come right around. Mr. Reinhardt is going to represent him. They are co-defendants, and we will have the Not Guilty pleas taken of the other defendant, Saldana.

The Clerk: Mr. Saldana, what is your plea to all five Counts, sir?

Defendant Saldana: Not Guilty.

The Court: "Not Guilty." So just to save time, we have them together. They are joint defendants. Palomino has an attorney. Saldana has Mr. Reinhardt. Set it for trial say July 22nd?

The Clerk: At 10:00 A.M., before Judge Hall.

Mr. Tenner: Your Honor, July 22nd, I am engaged. The 23rd or 24th is agreeable.

The Court: How about July 15th, then?

Mr. Tenner: July 15th is satisfactory.

The Court: That is satisfactory. July 15th, then, 10:00 o'clock, in Judge Hall's.

Mr. Tenner: Your Honor, I would like to be heard briefly on reduction of bail.

The Court: All right. What is the bail now?

Mr. Tenner: Bail is now set at $20,000.

Mr. Judd: This is as to the defendant Palomino only, your Honor.

The Court: Yes.

[fol. 6] Mr. Tenner: In that matter, if your Honor please, the defendant has a bakery here in Los Angeles, he is a citizen, he is married and has two children. It is true that he has had a little difficulty, but the most recent of those instances was back about 10 years ago.

The Court: Drop the bail to $10,000.

Mr. Tenner: Thank you.

Mr. Judd: May the Government be heard, your Honor—

The Court: Yes.

Mr. Judd: Before this bail is reduced.

The Court: Yes.

Mr. Judd: This defendant has a prior——

The Court: Counsel stated that, yes.

Mr. Judd: What?

The Court: Counsel stated that he had a prior.

Mr. Judd: Prior narcotics, in other words, in the State.

The Court: Yes.

Mr. Judd: And this was eight years ago and he also has a prior conviction for rape, and the Government opposes the motion for any reduction of bail.

The Court: Well, you know my attitude. Bail is only to assure the appearance of the defendant, so I will grant the bail reduction to $10,000.

Mr. Tenner: Thank you.

Your Honor, may I also be heard briefly as to whether [fol. 7] this matter of necessity must be transferred to Judge Hall.

The Court: Well, I finish the criminal calendar on June 30th.

Mr. Tenner: Thank you, your Honor.

The Court: That is the reason for that.

Judge Harrison is to have the calendar July, August and September, but Judge Hall is going to hear it for him.

Mr. Tenner: Judge Hall. Thank you.

The Court: He is going to have a couple of visiting Judges here to help him.

[fol. 8] In the United States District Court, Southern District of California, Central Division

Honorable Thurmond Clarke, Judge Presiding

No. 26,878—Criminal

United States of America, Plaintiff,

vs.

Leonard Saldana, Defendant

Reporter's Transcript of Proceedings on Withdrawal of Guilty Plea—June 26, 1958

Appearances:

Attorneys for Plaintiff, United States of America: Laughlin E. Waters, United States Attorney, Lloyd F. Dunn, Assistant United States Attorney, Chief, Criminal Division, By: Thomas R. Sheridan, Assistant United States Attorney,

Attorney for Defendant Leonard Saldana: Stephen Reinhardt.

[fol. 9] Los Angeles, California, Thursday, June 26, 1958, 9:45 A.M.

(The court hears another matter)

The Clerk: Case No. 26,878, Leonard Saldana.

The Court: Yes.

Mr. Reinhardt: Your Honor, at this time the defendant would like to withdraw a Plea of Not Guilty and enter a plea of Guilty to Counts One and Two.

The Court: Yes. The Clerk may take the plea.

The Clerk: Leonard Saldana, is it your desire to withdraw your plea of Not Guilty to Counts One and Two and enter a further and different plea?

Defendant Saldana: Yes.

The Clerk: What is your plea to Count One?

Defendant Saldana: Guilty.

The Clerk: And what is your plea to Count Two?

Defendant Saldana: Guilty.

The Court: Mr. Miller (The Bailiff), wait a minute. I am trying to take a plea and I just cannot do it, for I can't hear whether they are saying nolo contendere or Not Guilty. They will have to talk out in the hall. Go ahead now. Let us start again. I don't know what you said.

Mr. Reinhardt: Your Honor, the defendant would like to withdraw his plea of Not Guilty to Counts One and Two and enter a plea of Guilty to those Counts.

[fol. 10] The Court: All right.

The Clerk: Mr. Saldana, is it your desire to withdraw your plea of Not Guilty to Counts One and Two and enter a further and different plea?

Defendant Saldana: Yes.

The Clerk: What is your plea to Count One?

Defendant Saldana: Guilty.

The Clerk: And to Count Two, what is your plea?

Defendant Saldana: Guilty.

The Court: Do you want to file an application?

Mr. Reinhardt: No, your Honor. May I speak on the matter of sentencing at this time?

The Court: Yes.

Mr. Reinhardt: This is a narcotics violation and no probation is authorized. In these cases, as your Honor knows, there is a minimum sentence of five years.

The Court: Yes.

Mr. Reinhardt: And as a result, any time the defendant serves between now and sentencing is time he cannot make up.

The Court: Yes.

Mr. Reinhardt: As he gets no credit for that time.

The Court: Would you like to have me make it five years on each Count and to run concurrently and waive time right now?

Mr. Reinhardt: Yes.

[fol. 11] The Court: Mr. Sheridan?

Mr. Sheridan: Your Honor, if I may be heard on just one point.

The Court: Yes.

Mr. Sheridan: (Continuing) Not on his sentence, but on the fact that in this case there is a co-defendant and I would suggest that policywise, where there is another defendant who is going to stand trial, that it is usually advisable to not sentence one defendant first, in that we don't know what his intentions are and we don't feel it is permissible to pass sentence now.

The Court: Well, he wants me to pass sentence. When is the other defendant set for trial?

Mr. Sheridan: He is set for trial on July 15th, your Honor. So I would suggest that you sentence this defendant here on July 21st, which would be fine, in that we never can tell that he is going to appear as a witness.

The Court: I see. They are afraid that he might get on the stand at the other trial and take all the blame.

Mr. Reinhardt: Your Honor, on that subject, may I say, in the first place, it doesn't seem to me quite correct for the Government to make a man serve an extra month in order to insure what his testimony will be at a subsequent trial. There is a perjury statute and if Mr. Saldana perjures himself, the court at that time can act, and he has told me [fol. 12] that he does not intend to testify for the co-defendant.

The Court: Well, I will keep my word and I will make it five years on each Count, to run concurrently, on the 21st, and we will have him here on the 21st at——

Mr. Sheridan: 2:00.

The Court: The 21st at 2:00 o'clock.

Mr. Sheridan: At 2:00 o'clock.

The Court: At 2:00 o'clock.

Mr. Reinhardt: At 2:00 o'clock.

Mr. Sheridan: Thank you.

The Court: I will keep my word with you at that time. It will be five years on each Count, to run concurrently. That is the minimum. I don't think you can beat that.

Mr. Reinhardt: Thank you.

The Clerk: Do you want a Probation Report then, your Honor?

The Court: No. There is no use to have a Probation Report, counsel, because of the fact that he can't get probation anyway.

Mr. Reinhardt: Yes; we will waive that.

The Court: Yes. All right.

(A short intermission.)

The Clerk: Just a minute. Mr. Sheridan, Mr. Saldana is charged in Counts Three, Four and Five.

Mr. Sheridan: Well, hold those.

[fol. 13] The Court: We are going to hold those, hold disposition until July 21st at 2:00 p.m.

Mr. Sheridan: Hold those until July 21st.

The Court: Yes, we will hold the disposition of the other Counts.

Mr. Sheridan: Yes.

[fol. 14] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Peirson M. Hall, Judge Presiding

No. 26,878 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

LEONARD SALDANA, Defendant

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON SENTENCE—July 21, 1958

APPEARANCES:

For the Plaintiff: Laughlin E. Waters, United States Attorney, Los Angeles 12, California; by Robert D. Hornbaker, Assistant United States Attorney.

For the Defendant: No appearance.

[fol. 15] Los Angeles, California; Monday, July 21, 1958; 2:00 P.M.

The Court: Any ex parte matters?

The Clerk: No, your Honor.

The Court: Call the calendar.

The Clerk: Item No. 28. Case No. 26,878, United States v. Leonard Saldana.

The Court: Is the defendant's counsel present?

Mr. Hornbaker: No, your Honor. I understand he will not be present.

The Court: Why isn't your lawyer here, Mr. Saldana?

The Defendant: He had another case, I believe, in another court.

The Court: This matter was put over until today for sentence after a plea of guilty by you before Judge Clarke. The case has been transferred to my calendar, and because the other defendant has pleaded not guilty and will be tried before me, for that reason your plea is transferred to this calendar.

The case of your co-defendant is set for July 29th. It may be that you will wish to withdraw your plea of guilty and go to trial.

Have you talked to your lawyer about it?

The Defendant: Can we get a continuance of a week?

The Court: No. I will continue the matter until tomorrow [fol. 16] morning, and in the meantime you can have your lawyer get a hold of you today.

The Defendant: Thank you, your Honor.

[fol. 17] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Peirson M. Hall, Judge Presiding

No. 26,878 Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

LEONARD SALDANA, Defendant

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON SENTENCE—July 22, 1858

APPEARANCES:

For the Plaintiff: Laughlin E. Waters, United States Attorney, Los Angeles 12, California; by Thomas R. Sheridan, Assistant United States Attorney.

For the Defendant: No appearance.

[fol. 18] Los Angeles, California; Tuesday, July 22, 1958; 10:00 A.M.

(Other court matters.)

The Clerk: Case No. 26,878, United States v. Leonard Saldana.

Mr. Sheridan: On this case, your Honor, it was on yesterday for sentence and you stated you wanted it brought up this morning and for his attorney to come in with him.

I contacted his attorney and didn't get in to see his attorney until after 9:00 o'clock this morning, and he reminded me—and I think it may have slipped your mind yesterday—that both his sentence and the proceedings in the other matter were to be continued.

His attorney, a man by the name of Stephen Reinhardt, spoke to you very briefly about this case and you informed us that you were going to continue the sentence on this case until the co-defendant, Albert Palamino, came to trial, that he is due for trial on the 29th of this month, and at that time Mr. Reinhardt asked you if there is any need for him to appear in court on Monday and have you continue the sentence, as he is a court appointed attorney, and you gave him that permission, that he did not need to be in court.

The Court: My purpose in continuing the matter until today was to give the defendant an opportunity to consult with his lawyer to see if he still wants to plead guilty.

[fol. 19] Mr. Sheridan: That is going on, your Honor, with the other co-defendant as well, and I think there is something going ahead.

The Court: Very well. The matter of sentence is continued to and set for July 29th at 10:00 a.m. in this courtroom.

Mr. Sheridan: Thank you.

[fol. 20] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Peirson M. Hall, Judge Presiding

No. 26,878-Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

ALBERT ARROYO PALOMINO and LEONARD SALDANA, Defendants

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON VACATION OF PLEA —July 29, 1958

[fol. 21] APPEARANCES:

For the Plaintiff: Laughlin E. Waters, United States Attorney, by: Thomas R. Sheridan, Assistant United States Attorney.

For the Defendant, Albert Arroyo Palomino: (The de-

fendant is not present, but he is represented by counsel:) Jack Tenner, Esq., 6535 Wilshire Boulevard, Los Angeles 48, California.

For the Defendant, Leonard Saldana: (The defendant is present in person and is represented by counsel:) Stephen Reinhardt, Esq., 433 South Spring Street, Los Angeles 13, California.

[fol. 22-23] Los Angeles, California, Tuesday, July 29, 1958, 10:00 A.M.

The Court: We will call the trial calendar first. If there are to be any changes of plea, counsel will announce that, and I will defer that until after I complete the call of the trial calendar.

The Clerk: No. 26,878, United States versus Albert Arroyo Palomino and Leonard Saldana.

Mr. Tenner: In that matter, if your Honor please, I wish to call the attention of the court that I think the defendant has absented himself from the jurisdiction of this court.

This matter was originally set for the 15th of this month. As your Honor may or may not recall, prior to that time I appeared before this court asking for a continuance. The matter was continued until today. I contacted the Palomino family to give them the new date.

I have been unable to locate the defendant. The wife has indicated that she does not know the present whereabouts. Since that information became known to me, I have made that information available to the office of the United States Attorney.

Since that time neither I, nor my office, nor any of his family have been contacted by Mr. Palomino.

The Court: Go ahead.

[fol. 24] Mr. Tenner: I do feel this, that there is probably no reason why this court should not forfeit the bail today. I would like to call the court's attention, however, to another matter, and that is, that if your Honor were to do that today, and forfeit the bail, the only ones who would really suffer would be the defendant's wife and his four children, because what is up as security for the bail is their life savings, $4,000, and their property. On the other hand, I don't believe——

The Court: I don't know why I should have any greater concern for this man's wife and his children than he did. If he has absented himself, and has absconded and become a fugitive, why, he knew that his bail would be forfeited, and he must have known if it was their life's savings, why,——

Mr. Tenner: What I have in mind, and what I would like to suggest that the court consider, would be perhaps to take a continuance for a period of time, and during that period of time your Honor could increase the bail, so that we could get a warrant out for his arrest. If you were to follow that procedure, I don't think anyone would suffer, the court would retain jurisdiction, we would not be giving the defendant any additional personal consideration, and if he is found during that period of time, we would save what is up with the bonding company, and if we didn't find him, at that time your Honor, I would suggest, could forfeit the [fol. 25] bail. I don't think anyone could suffer from that kind of an arrangement.

The Court: No, the court cannot tolerate the flight in these cases. We have ten cases now where bonds have been set from $10,000 to $30,000 in narcotics cases, and the defendants are fugitives. They have either fled and forfeited their bail, or they have become fugitives upon learning of the indictment. Not only will I not tolerate that, but I will forthwith forfeit the bond, and direct the United States Attorney, in their endeavors to find him, if they do find him, and find that he has violated the law concerning flight; that they be instructed to present that matter to the Grand Jury for re-indictment.

Mr. Tenner: May I simply call one other matter to your Honor's attention, for the sake of the record, and indicate that when the motion for continuance was granted, at my request, the defendant was not present, and did not know of this date, because I had been unable to get it to him.

In other words, that was a motion granted to me in the presence of the United States Attorney, and the defendant was not present in court, and was not ordered back. I state that for your Honor's consideration, and for the sake of the record, without at this time trying to argue the significance of it.

The Court: The order setting the case for trial is vacated.

due to the absence of the defendant, and the bond is for-
[fol. 26] feited. Counsel for the Government will prepare an appropriate judgment of forfeiture.

Mr. Sheridan: Yes, your Honor.

The Court: And a bench warrant to issue.

Mr. Sheridan: There is a co-defendant in this case, your Honor. I don't know if you wish to dispose of that matter now. He is present.

The Court: Is it just set for trial as to him, too?

Mr. Sheridan: No, he entered a plea before Judge Clarke, your Honor.

The Clerk: He is here for sentence, your Honor.

Mr. Sheridan: And he had a chance to appear when the defendant Palomino was still going to trial.

The Court: Is the defendant present? Let me see the file.

(The file was handed to the court.)

The Court: Leonard Saldana?

Mr. Reinhardt: Yes, your Honor, the defendant is present.

The Court: Oh, the defendant is present.

Mr. Reinhardt: Your Honor, may I be heard on the matter of sentence?

The Court: Well, I am not going to sentence him now.

Mr. Reinhardt: No.

The Court: Has the matter been referred to the probation department?

[fol. 27] Mr. Reinhardt: Your Honor, in connection with that, I would like to point out that your Honor had this case transferred here because your Honor said you did not want to take a part of a case. In view of the fact that the co-defendant will no longer be tried before your Honor,——

The Court: I don't know whether he will or not.

Mr. Reinhardt: I will explain what happened originally, your Honor. Mr. Saldana was brought before Judge Clarke, and he pleaded guilty, and he asked to be sentenced at that time. Judge Clarke then told the co-defendant that he would sentence him, and that he would sentence him to five years.

At that point, your Honor, the United States Attorney objected on the ground that Mr. Saldana should not be

sentenced before the trial of the co-defendant. Judge Clarke then agreed to withhold the sentence until after the trial of the co-defendant. However, at that time he announced that he would sentence him.

The Court: Did he plead guilty to all five counts?

Mr. Reinhardt: No, your Honor. He pleaded guilty to two counts.

The Court: He pleaded guilty to two counts?

Mr. Reinhardt: Yes, sir.

The Court: I think perhaps in the interests of justice I might vacate his plea of guilty to the two counts, enter a plea of not guilty on behalf of the defendant, and set the [fol. 28] matter down for trial again.

Mr. Reinhardt: Your Honor, may I suggest again, in the interests of justice, that he did plead guilty before the court, and he was told at that time that the sentence would have been made, but he was held in jail merely for the convenience of the court for another trial, and was told the sentence would be five years.

The Court: Apparently it smacks too much of having the appearance of a bargain.

Mr. Reinhardt: No, your Honor.

The Court: That if he would plead guilty, he would get five years.

Mr. Reinhardt: No, your Honor. He pleaded guilty——

The Court: Here he is charged in five counts.

The Clerk: He pleaded guilty to Counts 1 and 2.

The Court: But he is charged in all five counts, involving——

Mr. Sheridan: A total of about 15 ounces, your Honor.

The Court: 15 ounces of heroin.

Mr. Reinhardt: Your Honor, if I may just state, there was no bargain. This was done in open court.

The Court: I didn't say it was a bargain. I said it smacks of the appearance of a bargain.

Mr. Reinhardt: I hope that the appearance will not defeat what appears to me to be the interests of justice in this [fol. 29] case. I know it is rather unusual that the defendant was told what his sentence would be.

The Court: Can the defendant Saldana go to trial?

Mr. Reinhardt: Your Honor, I can't advise the defendant to go to trial. The defendant has told me that his proper

plea is a guilty plea. I don't want him to go to trial merely for litigation.

On the other hand, I think Mr. Sheridan will bear me out: What happened is just as I told you, your Honor, in Judge Clarke's court, that he really intended to sentence him at that time, and it was for the convenience of the court that it was delayed.

Mr. Sheridan: That much I do agree to, your Honor. The case was called on June 26th before Judge Clarke at 10:00 o'clock, and at the time he called it, the defendant Saldana did plead guilty to Counts 1 and 2. At that time Judge Clarke asked if he wanted to waive the probation report, and the defendant stated he did, and at that time Judge Clarke was about to sentence him. Then at that time I did object, prior to the sentence, and Judge Clarke said he would continue the sentence until disposition was made of the Palomino trial, and Judge Clarke did at that time indicate to the defendant what his sentence would be when he came back, and after that, of course, the defendant was transferred before yourself.

The Court: The matter is before me now, and I think in [fol. 30] view of what both counsel have stated, that this defendant here deserves a trial. I will vacate his plea of guilty to Counts 1 and 2, and enter on his behalf a plea of not guilty to all counts of the indictment. He had entered a plea of not guilty to the other counts?

Mr. Sheridan: That is correct, your Honor.

The Court: I can set it for trial next week. The man has been in jail now since June; isn't that right?

Mr. Sheridan: Since early in June, that is right.

The Court: How long have you been in jail?

Mr. Reinhardt: Since June.

The Court: Since June. He ought to be tried.

Mr. Reinhardt: Well, your Honor, I agree that it should be disposed of.

The Court: I can set it for trial, and it will be tried next week. I will set it for trial on August 5th, at 10:00 a.m. in this court.

[fol. 30-a] In the United States District Court, Southern District of California, Central Division

Honorable Peirson M. Hall, Judge Presiding

No. 26,878 Criminal

United States of America, Plaintiff,

v.

Leonard Saldana, Defendant

Reporter's Transcript of Proceedings on Motion to Transfer and Plea—August 1, 1958

Appearances:

For the Plaintiff: Laughlin E. Waters, United States Attorney, by Thomas R. Sheridan, Assistant United States Attorney.

For the Defendant: Shephen Reinhardt.

Reported by: Jane Horswell.

[fol. 31] Los Angeles, California. Friday, August 1, 1958. 10:00 A.M.

The Clerk: Case No. 26878. United States versus Leonard Saldana. Number 1 on the calendar.

The Court: Do you have the file?

The Clerk: No, sir, I do not. Do you have a copy of the indictment?

Mr. Sheridan: Yes, I do.

The Court: This is a plea as to the motion as to Saldana?

Mr. Reinhardt: Yes, your Honor.

The Court: Is this case set for trial?

Mr. Reinhardt: Yes, it is, your Honor. May I explain a little bit to your Honor the reason for this motion this morning?

The Court: Yes.

Mr. Reinhardt: At my request, the United States Attorney has arranged that this matter, a change of plea of the defendant, be placed on the calendar.

However, before your Honor begins the proceedings, I would like to ask for a few moments to request your

Honor to reconsider a motion I made in this court on Tuesday, which your Honor then denied.

May I begin by saying I was appointed in this case by the Court. At the time of the appointment, it was at the defendant's arraignment. Judge Clarke suggested I plead [fol. 32] the defendant not guilty, because his co-defendant had pleaded not guilty.

I did that, and then I talked to the defendant, and when I talked to him fully, he explained to me that he did desire to plead guilty, and has maintained that position ever since.

I went to the United States Attorney at that point, when I learned the defendant wanted to plead guilty, Mr. Sheridan, and was told that the government would accept a plea to Counts I and II, which I understand is fairly standard practice, not only here, but throughout the country, at the time of trial; if there were more Counts, you will accept a plea to a lesser number.

The Court: There is nothing saved to the government here, because the government has to try Palomino.

Mr. Reinhardt: Palomino has jumped the jurisdiction.

Mr. Sheridan: He is the defendant who failed to show, and whose bail you forfeited.

Mr. Reinhardt: It is possible that he will be found, and the government may have to proceed to trial. In any event, a guilty plea to two counts does permit a maximum sentence of forty years, as your Honor knows.

I would like to indicate to your Honor that not only was there no deal made in this case, but your Honor suggested [fol. 33] the other day it had the appearance of a deal, and I want to show it was the normal procedure. At that time it happened to be Judge Clarke who took the plea. I had not seen Judge Clarke before, and I did not make arrangements to have the plea put on the calendar. The U.S. Attorney did it at my request. It was then in open court that Saldana changed his plea to guilty.

I then suggested immediate sentence, since I felt, since there is a flat minimum, any parole served would be dead time. Judge Clarke agreed at that time that he would sentence the defendant that morning, and said he would sentence him to five years. He fixed the sentence at that time.

Mr. Sheridan then objected to immediate sentence, because there was a co-defendant, and Mr. Sheridan's theory was that Saldana should not be sentenced because he might then come back and testify in favor of the co-defendant.

I objected that the defendant should not be held in jail awaiting sentence for the convenience of the government, because there was a perjury statute available in the event he did perjure himself, and that was the solution, instead of holding someone in jail. But I was overruled by Judge Clarke.

However, when he overruled me, he stated in open court [fol. 34] he would sentence the defendant to five years when he returned him for sentencing.

That was not the promise of an individual, your Honor, that was the promise of the United States District Court. At least that is the way it would appear to the defendant who came before the Court and was told that would be his sentence.

I realize you cannot be and should not be bound by a statement of one of your fellow judges. And I would hesitate to even suggest to you that at the time of the sentence that you should be bound by that. However, I would want to avoid being required to make that request of you by asking you at this time if in view of the fact that this case did arise in that manner, and that Judge Clarke did in open court make that promise to the defendant, or make that statement of what the sentence was, and the defendant has since that time relied on that, and as I understood that that was to be his sentence, if, in view of that, your Honor would consider transferring this matter back to Judge Clarke, so that the defendant could once more plead before him.

The Court: I do not consider myself bound by any statement made by Judge Clarke.

Mr. Reinhardt: No. I understand that.

The Court: And I can see no reason for transferring this back to Judge Clarke, because it would be merely [fol. 34-a] in my opinion, confirmation of what appears to have all the earmarks of a deal.

In other words, the defendant is relying upon the fact that Judge Clarke said he was going to give him five years, so he has an understanding on his part that if, as and when, because he pleads guilty, he is going to get five

years, which might be another and different sentence than if he were tried and found guilty.

Mr. Reinhardt: No, your Honor, no statement was made until after the defendant pleaded guilty. He pleaded guilty before any discussion of his sentence. The Court then indicated and told him twice that this was his sentence, and that it would be delayed for the convenience of the Government.

The Court: All right, what is your motion now?

Mr. Reinhardt: My motion is to ask your Honor at this point to transfer this matter back to Judge Clarke.

The Court: That motion is denied.

Mr. Reinhardt: In that event, your Honor, we would now like to plead guilty to Counts I and II.

The Court: I would not accept a plea of guilty to Counts I and II. As indicated before, there was almost 15 ounces involved in the alleged violation. If this defendant is guilty, he ought to be tried and have a jury determine his guilt.

[fol. 34-b] Mr. Reinhardt: Your Honor, I'm sorry. This is my first case. In the second place, I was appointed by the Court.

The Court: Under the law, a plea of guilty must be accepted by the Judge, so I decline to accept the plea of guilty. That being the case, there is nothing to do but for the Court to enter a plea of not guilty, and set the case for trial.

When is it set?

Mr. Sheridan: I believe you set it for August the 5th, your Honor.

The Court: That is next Tuesday.

Mr. Sheridan: Yes, your Honor. August 5th at ten o'clock.

Your Honor, would you for my sake clarify one point as to the co-defendant. In this case defendant Palomino, who on Monday of this week you forfeited the bond or the bail of $10,000.00, and ordered a Bench Warrant issue, and at that time you ordered the government to prepare an order or judgment.

I searched around through the files, and I am at a loss as to what type of order or judgment you had in mind at that time.

The Court: Let us call it a *scire facias*.

Mr. Sheridan: Whatever that means.

[fol. 34-c] The Court: You will have the form, and here is your copy of the indictment. Was his bond ten?

Mr. Sheridan: It was originally twenty. It had been reduced to ten by another Court, and you forfeited the ten.

The Court: You will be prepared to go to trial Tuesday?

Mr. Sheridan: I will be prepared.

[fol. 35-36] In the United States District Court, Southern District of California, Central Division

Honorable Peirson M. Hall, Judge Presiding

No. 26,878 Crim.

United States of America, plaintiff,

vs.

Leonard Saldana, defendant

Reporter's Transcript of Proceedings—August 5, 1958

Appearances:

For the Plaintiff: Laughlin E. Waters, United States Attorney; by Bruce A. Bevan, Assistant United States Attorney.

For the Defendant: Stephen Reinhardt.

[fols. 37-40] Los Angeles, California, Tuesday, August 5, 1958, 10:00 A. M.

(Other court matters.)

The Clerk: United States v. Leonard Saldana.

The Court: All right. The clerk will impanel the jury.

The record will show the defendant is present in person and by counsel.

Mr. Reinhardt: Your Honor, may we approach the bench?

The Court: Yes.

(Whereupon, the following proceedings were had at the bench:)

Mr. Reinhardt: Your Honor, I feel it is my duty to state once more for the record that the defendant objected to

the vacation of his plea of guilty, and he does not go to trial of his own choosing because the court has vacated his plea of guilty.

The Court: Well, your objection is stated for the record.

(Whereupon the following proceedings were had in open court:)

(Jury impaneled and sworn.)

* * * * * * *

[fol. 41] Jayne R. Lieuanan, called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 42] Direct examination.

By Mr. Bevan:

Q. What is your business or occupation, sir?

A. Treasury enforcement agent assigned to the Federal Bureau of Narcotics.

Q. How long have you been with the Treasury Department, sir?

A. Approximately two years.

Q. Were you then a Treasury agent on April 28th, of 1958?

A. I was.

Q. On that date did you have occasion to meet the defendant, Leonard Saldana?

A. I did.

Q. And where were you when you met him, sir?

A. 445 South McBride Street, East Los Angeles.

Q. And how did you get there?

A. On a Government vehicle.

[fol. 43] Q. At the time that you—Strike that.

Did anyone introduce you to Mr. Saldana?

A. Yes, sir.

Q. And who was that, sir?

A. Confidential informant.

Q. Now, did you have conversations with the defendant after your introduction?

A. I did.

Q. And the 445 McBride Street is the residence of whom, did you determine?

A. Leonard Saldana.

Q. Besides the confidential informant, was anyone else present with you at the time you held the conversations with the defendant on April 28, 1958?

A. No, sir.

Q. Please relate those conversations. What did you say to the defendant, and what did the defendant say to you?

A. As I was introduced to defendant Saldana, I was introduced as Salvador, Sal.

After an exchange of greetings, defendant Saldana asked, inquired from me how much I wanted to pick up. "Pick up" means to purchase.

At that time I inquired from him how much the ounce would cost. He then told me that it would cost $200.

He then asked me how much heroin I wanted. I then told [fol. 44] him that I had enough for two ounces, $400.

He then told me to return at approximately 8:00 p. m. I'd say, prior to that, he then told me, "You wait in the car. I'm going back into the house and call my connection. At that time I'll return and tell you what time you have to return to pick up the stuff."

He went inside the house, and shortly thereafter I observed him making a telephone call.

He then returned, after making the phone call, returned to me and told me, "Come back at 8:00." I then departed——

The Court: Pardon?

The Witness: "Come back at 8:00 o'clock here."

The Court: I see.

The Witness: I then departed with the confidential informant.

By Mr. Bevan:

Q. Did you return later in the evening, Mr. Lienanan?

A. At approximately 7:50 p. m., I returned to 445 South McBride Street, East Los Angeles.

Q. Were you with the confidential informant at that time?

A. I was.

Q. What happened after you arrived there?

A. As I parked the car in front of the residence of the defendant Saldana, Saldana opened the front door and [fol. 45] motioned to us come in (indicating).

We then left the Government car and walked inside the house.

He then told us to sit down, and as the confidential informant and myself sat down in the living room, defendant Saldana left the living room and entered the bedroom.

Approximately a minute elapsed. He then returned to the living room and laid down—took from a handkerchief two rubber contraceptives containing white substance, which he laid down on the coffee table.

I then picked it up, opened the contraceptive, and tried to feel the substance, and when it smelled acidic to me, I then determined that it could very well be heroin.

I then took the two rubber contraceptives, and I handed defendant Saldana $400 in official advance funds, U. S. Government money.

Q. Did you have any further conversation with the defendant at this time?

A. At that time, as I was leaving the house, there was a knock, and an unidentified male Mexican entered the residence, and I left.

Saldana then followed me and the special employee to the car. He then inquired from me when I would be back to pick up some more.

I then told him that I was going to call him in a day or [fols. 46-57] so. I then departed after that.

Q. Did you obtain his telephone number at this time?

A. Yes, sir. He gave the telephone number to me, which I wrote down on a piece of paper.

Q. Just to avoid any misunderstanding, when you used the term "special employee" as you did, what did you mean by that, Mr. Licuanan?

A. Confidential informant.

Q. And by "special employee" you do not mean any employee of the Government, actual employee of the Government, do you, but that's just a term used to describe

confidential informants insofar as the Federal Bureau of Narcotics is concerned?

A. That's right, sir.

The Court: Do you wish to withdraw this witness for the purpose of identifying certain objects?

Mr. Bevan: Yes, your Honor, with the court's permission, I do.

[fol. 58-60] JAYME R. LICUANAN, resumed the stand as a witness on behalf of the plaintiff and, having been previously duly sworn, testified further as follows:

Direct Examination (continued)

[fol 61] By Mr. Bevan:

Q. Following and after April 28th, did you ever see the defendant again?

A. Yes, sir.

Q. And when was the next time that you saw him?

A. May 7, 1958.

Q. Had you previously conversed with him before that time and after April 28, 1958?

A. Yes, sir; approximately 8:55 p.m. on May 6, 1958, I called the defendant over the telephone.

Q. Well, you placed a telephone call to the number which previously was given you?

A. That's right, sir.

Q. And did you hear a voice answer on the other end?

A. Yes, sir.

Q. What did you say at the time you first spoke into the phone?

A. When the voice answered on the other end of the telephone, I identified myself, and I said, "This is—esta Sal." I was talking to the defendant in Spanish.

The Court: Did you recognize the defendant's voice?

The Witness: I did, sir.

By Mr. Bevan:

Q. What was the conversation that you held then with the defendant?

A. The defendant recognized my voice and said, "Yes, Sal."

[fol. 62] I said, "Leonard." He said, "Yes."

"I'd like to pick up a piece tomorrow."

He said, "Anda le pues"—that means, "It's O.K." He said, "Come around about 5:00 p.m. after I get out of work."

Q. Are you familiar, Mr. Lieuanan, with the terms that are employed in the narcotic trade?

A. Yes, sir.

Q. And for how long have you been familiar with such terms?

A. Since I joined the Bureau.

Q. Now, does the word "piece" have some particular meaning in that trade?

A. Yes, sir.

Q. What does it mean?

A. It refers to one ounce of heroin.

Q. Was that about the substance of your telephone conversation——

A. That's right, sir.

Q. —on May 6th?

And what time of day did you meet the defendant on May 7, 1958?

A. I went to his residence at about 5:00 o'clock p.m. He was not home.

I went around the block, returned to 445 South McBride Street. I parked in there, and shortly thereafter, at [fol. 63] approximately five minutes after five, I observed the defendant arrive in a 1951—I believe it was—Chevrolet.

He then parked the car in front of the Government vehicle where I was in. He got out of the car and walked to my car, and at this time he said, "Come back at 6:00 o'clock. I'll have to call my man. He hasn't arrived yet." I then departed.

At 6:00 o'clock I called him over the telephone.

He then stated to me that the man—referring to the source of supply—had not arrived yet. He then told me to come over to his house and wait for the man.

I told him I was having dinner, and I would see him in about an hour.

At approximately 6:55 p.m., on May 7, 1958, I returned to 445 South McBride Street. I was invited by the defendant into the living room.

I sat down for approximately 10 or 15 minutes, and while seated in the living room I heard a car parked in front of the house.

Q. Before hearing that car, did you have any conversation with Mr. Saldana?

A. Except that—yes, sir—he only told me that he was sorry that the man was not there yet; he was sorry that he hung me up.

And then we had some other conversations which did not [fol. 64] pertain to narcotics.

Q. What happened after you heard the car drive up?

A. When I heard the car stop in front of 445 South McBride Street, defendant Saldana was then seated on the couch, and he said—he looked in the window, and he said, "Wait a while; here's the man," when he got out of the couch and got out of the house, walked to the station wagon. As he was walking towards the car, I looked in the window and I saw defendant Saldana get in the station wagon, 1958 Ford station wagon, where he remained for approximately a minute.

He then returned, got out of the station wagon and returned to the house, and laid Exhibit No. 2-A on the table.

Q. By "2-A," referring to the court Exhibit 2-A before you?

A. That's right, sir, this exhibit in here.

Q. Yes. Proceed.

A. When he laid this on the table, I picked it up and I opened the contraceptive and I smelled the contents, and I smelled it had acidic odor in it.

I then paid him $200. And then I started to leave, and he asked me, he says, "Sal, how much more do you want? When are you going to come back?" He said, "I can supply you all you want."

I then told him that I was going to call him back in a day or so. I then departed.

[fol. 65] I left the house, got in the Government car, and then I proceeded to the East Los Angeles Sheriff's substation, carrying Exhibit No. 2.

The Court: You were alone?

The Witness: By myself, yes, sir. I was followed by——
The Court: On this entire occasion?
The Witness: That's right, sir.
The Court: That is, you entered his house alone?
The Witness: By myself, yes, sir.
I was then on my way to the Sheriff's substation, and I was followed by the other covering agents.

. . . . . .

[fol. 66] By Mr. Bevan:

Q. After the events on May 7th that you have testified to, did you ever have any further conversation with the defendant Saldana?

[fol. 67] A. Yes, sir. I called him on two occasions. The date, I'm not too clear. I don't remember. At that time I was working on some other case. But each time that I called him I was telling him that I was not ready to make any purchases because I haven't disposed of any of my—of the heroin that I purchased from him previously.

Q. Did you later see the defendant in person?

A. Yes, sir.

Q. When was that, Mr. Lieuanan?

A. On May the 13th, 1958, I went to 445 McBride Street at approximately 5:30 p.m., at which time I met the defendant. And he made—I got out of the house and was met by defendant on the sidewalk.

Q. You said "got out of the house."

A. I got out of the car.

Q. I see.

A. And defendant got out of his house, and we met on the sidewalk.

I then told him that I wanted to pick up a piece.

He then told me to wait in the car, and he got back in the house, made the telephone call.

He then returned to me shortly thereafter, approximately a minute or a minute and a half, and told me that the man was not home, but that the man might be in one of the motorcycle shops at the corner of Atlantic and Whittier, I believe [fol. 68] it was, in East Los Angeles.

He then asked me to drive him over to the corner of Atlantic and Whittier.

Q. Did you do so?

A. Yes, sir. Defendant Saldana then got into the Government vehicle I was driving, and then we drove, proceeded to—we proceeded east on East Street towards Atlantic. We haven't—I think we drove for about five or six blocks when the defendant Saldana observed a motorcycle headed west on 6th Street. He then told me to park on the corner.

As the motorcycle got abreast us, going towards the west, he motioned to the rider of the motorcycle. The motorcycle then made a U turn and parked his motorcycle behind the Government car.

Saldana then left the Government vehicle and went, met the rider of the motorcycle. He talked to the rider, which later we identified as Albert Palomino, for approximately two or three minutes.

He then returned to the Government vehicle; the rider of the motorcycle left the area.

Saldana then told me to make a U turn. We went down to Ford Street, and then on Ford we went north towards Wabash and City Terrace, Wabash and City Terrace Boulevard—I believe it's a boulevard, isn't it?

As we got to the corner, to the intersection of Wabash [fol. 69] and City Terrace, defendant Saldana told me to park on the corner.

As we were parked on the corner, I observed Albert Palomino riding his motorcycle coming from City Terrace, headed west, I believe, the direction out there. He then saw our car parked on the corner, and he made a U turn and parked right behind the Government vehicle.

As the motorcycle was parking, stopping, Saldana left the Government car, and I looked back and I saw Albert Palomino pick up what later turned out to be Exhibit No. 3, and held it in his left hand. Saldana then walked towards the left side of the rider of the motorcycle and conversed with the rider for approximately two or three minutes. At this time I observed Palomino hand Saldana what later turned out to be Exhibit No. 3.

After Saldana took possession of Exhibit No. 3, he walked back to the Government vehicle, got in the Government vehicle, and, as I was making a U turn, the rider of the motorcycle left the area.

We then proceeded back to 445 South McBride Street, the residence of the defendant.

Q. What happened there?

A. As I got in front of the residence of defendant Saldana, I then handed him $200 of official advance funds.

He then gave me the——

[fol. 70] Q. You have something in your hand. What is that, sir?

A. He then gave me Exhibit No. 3.

The Court: 3-A.

The Witness: 3-A.

After he gave me Exhibit No. 3-A, I handed him $200. That's the way it went.

I then departed. He asked me—before I left, he asked me when I would be back to pick up some more stuff.

This time I told him that I was tired of having to come back every two or three days to pick up some stuff. I told him that next I would be back, I would order approximately five ounces—five pieces.

He said, he then told me, "Well, that's fine; that would be better."

So I then left the area and retained Exhibit No. 3 in my possession until I got back to the office of the Federal Bureau of Narcotics.

* * * * * * *

[fol. 71] By Mr. Bevan:

Q. Did you have occasion to converse with the defendant after that date, which was May 13, 1958, Mr. Lieuanán?

A. I believe that, as I recall, right after I bought, I purchased Exhibit No. 3-A, I made a telephone call to defendant Saldana, at which time I told him that I had made a phone call to my money man—referring to the man that had the money—in San Francisco, at which time I told him that the man in San Francisco wanted to pick up about five pieces—referring to five ounces of heroin.

He then told me, "Well, whenever you're ready, give me a call, and I'll fix it up for you."

I then made an appointment with the defendant, I believe [fol. 72] it was two or three days after. I believe it was May the 16th, when I was supposed to see him.

I didn't see him at that date, but I sent him a wire from San Francisco, telling him that I was going to be back in

town, in Los Angeles, on May the 21st, 1958, approximately 4:00 p. m., to pick up, I believe it was, the arrangements were to pick up five ounces.

On May 21, 1958, at approximately 2:55 p. m., I arrived in front of 445 South McBride Street in East Los Angeles, with Deputy Victor Segura from the Ventura County Sheriff's office. At that time, as I arrived, I observed defendant Saldana inside the 1958 Ford station wagon, which was driven by defendant Albert Palomino.

I parked—I passed the station wagon, which was parked right in front of the residence of Saldana, and I parked my car two doors, two houses down, because when Saldana saw me arrive, Saldana left the 1958 Ford station wagon and walked towards the Government vehicle I was driving. By that time, I also got out of the Government vehicle and met Saldana in the middle of the—I believe it was in the middle of the block, on the sidewalk.

Q. Did you have some conversation with him at that time?

A. Yes. At that time he inquired who was with me, and I told him it was my uncle and that he was bankrolling me; in other words, he had the money, that he was going [fol. 73] to finance the deal.

Q. That's what you said to him, just what you said?

A. Yes. I told him, "That's my uncle; he's the money man. Don't worry about him."

He said, "Well, that's O. K., but I don't want to meet him."

I said, "You don't have to meet him."

At that time he said, "Well, how much do you want?"

I then told him I wanted five pieces for the man in San Francisco, and my uncle wanted another five pieces.

So he said, "That's fine."

So then he left me and walked back to the 1958 station wagon wherein he had a conversation, which was about approximately a minute, with Albert Palomino, at which time Albert Palomino left the area, and Saldana started walking back on the sidewalk where I was waiting for him, and he told me, "Well, let's go out in the house and sit on the porch."

I said, "Why the porch?" I said, "Let's sit down in the car."

He said, "No. If the man doesn't see me on the porch, that means there's something wrong."

So we went up—I went up to the porch.

Then he said, "Well, let's go buy some beer."

I said, "O. K."

So then Saldana got in the car—we walked to the car, [fol. 74] and Saldana got in——

Q. To whose car?

A. I beg your pardon?

Q. To whose car?

A. The car I was driving, the Government vehicle—and then we went around—I can't remember the name, the name of the street that's next to McBride, but there's a store in the middle of the block, a grocery store. Well, we went, and Saldana bought six cans of beer.

After Saldana bought the six cans of beer, we then went around towards 3rd Street and entered McBride and parked in front of 445 South McBride Street.

Saldana got out of the car and was squatting on the sidewalk. I then left the Government vehicle——

The Court: What do you mean, "squawking"?

The Witness: Squatting.

The Court: Oh, squatting.

The Witness: Squatting.

I then got out of the car and sat with defendant Saldana. Deputy Segura was inside the car.

Then we started talking about connections; at which time Saldana told me, he said, "I can get you better stuff across the border. I know the people out there."

Which was overheard by—the conversation was overheard by Deputy Segura.

[fol. 75] The Court: That may be stricken.

You don't know what Deputy Segura heard. Go ahead.

The Witness: At about this time, approximately, I'd say, 3:30, the 1958 Ford station wagon came back to McBride Street and parked behind the Government vehicle, at which time Saldana left the general vicinity of the Government car and walked towards the 1958 Ford station wagon.

As he got into the passenger side of the station wagon, I seen Saldana put his hand inside the station wagon, and

observed Palomino pick up the brown paper bag and hand it to defendant Saldana.

When I observed this, I believe I asked Saldana if that was the stuff, and he said, "Yes," at which time I then ran towards the car and placed Saldana and Palomino under arrest.

Then Saldana threw the paper bag to me and started running.

By Mr. Bevan:

Q. Then what happened?

A. By that time Deputy Segura went towards the driver's side of the Ford station wagon and took Palomino into custody.

Q. Then what happened?

A. I then picked up the brown paper bag, and I——

Q. Let me interrupt just for a moment, Mr. Lieuanan.

What happened to Mr. Saldana whom you just described as running?

[fol. 76] A. Oh, by this time, I believe it was, Deputy Peterson and the State narcotic agent took pursuit of Saldana. While Saldana was—I lost sight of Saldana, and then I picked up the brown paper bag and kept it in my possession.

I looked inside and I saw there were rubber contraceptives.

The Court: What did you do with it?

The Witness: I kept it in my possession until Deputy Peterson and State Narcotic Inspector Velasquez returned with Saldana towards the area. I then handed the brown paper bag to Deputy Peterson, who kept it in his possession until we all met in the office of the Federal Bureau of Narcotics.

By Mr. Bevan:

Q. Would you take Exhibit 4-A, that brown paper bag you have in your hand, and tell us what that is, Mr. Lieuanan?

A. This is the brown paper bag wherein the other, the 10 rubber contraceptives were contained in.

The Court: Is that the brown paper bag which you say you picked up?

The Witness: Yes, sir; that's right, sir.

The Court: Who threw the bag?

The Witness: Defendant Saldana.

The Court: Threw it on the ground, on the street?

The Witness: No, he threw it at me.

The Court: Oh, he threw it at you?

[fol. 77-81] The Witness: Yes, sir, and it fell on my feet.

The Court: That was after you told him he was under arrest?

The Witness: That's right, sir.

. . . . . .

[fol. 82] Cross-examination.

By Mr. Reinhardt:

Q. Mr. Lienanan, you testified on direct that you were [fol. 83] accompanied, in your first meeting with Mr. Saldana, by a confidential agent. Will you tell me the name of that agent?

Mr. Bevan: Objected to, your Honor. This is a—well, as the witness has testified—a confidential informant, and I see no materiality for the reason to disclose the identity of this man and subject him to the possibility of injury or harm.

This man did not participate in this transaction other than introducing the agent.

Mr. Reinhardt: Your Honor, would you prefer this to be heard at the bench or should I make my statement on this point from here?

The Court: Well, you are going to have to have some time to look at the statements, so you can argue that point out in the absence of the jury.

You are excused until 10:00 o'clock tomorrow morning, and you will remember the admonition. You must not discuss this case among yourselves or with any other person, or form or express an opinion or conclusion on it until it has finally been submitted to you for your decision. You are excused then until tomorrow.

(Whereupon, the jurors left the courtroom, and the following proceedings were had in the absence of the jury:)

Mr. Bevan: Mr. Lienanan, you are excused.

The Court: You don't need to stay there.

[fol. 84] (Witness temporarily excused.)

The Court: The basis of your objection is that it is immaterial?

Colloquy Between Court and Counsel.

Mr. Bevan: And also, your Honor, privileged. The man has been identified as a confidential informant, and the Government relies upon the privilege which the courts have attached to such persons. The courts have invariably held, where a person is a mere informant or tipster, one need not reveal his identity.

Where he participates in the transaction, or the Government relies upon information given by the informant as its probable cause for arrest and search, then, in that case, the identity must be disclosed. But I do not think that the confidential informant's participation in this transaction is sufficient to outweigh the disadvantage of revealing to the world at large his name and thus, probably, his location.

I think, in the recent Supreme Court case of Roviaro v. United States, decided, I believe, last December—I'm sorry, I don't have the citation immediately at my fingertips, but I could get it for your Honor—that the Court said that there must be weighed these various interests, as to the interest of the defendant in preparing his trial versus the public policy in protecting informants. And in that case, why, I believe it was one where the confidential informant was actually the purchaser of narcotics and did so in an auto-[fol. 85] mobile in which a narcotic agent was hidden. And when the narcotic agent testified at the time of trial, why, the Supreme Court held that it was error for the trial court in that instance to refuse to disclose the identity of the informant since he vitally participated in the transaction, and the informant was not produced at the time of trial.

But here, where the only contact of the confidential informant was to make a mere introduction, I don't think that, weighed against the public policy of protecting informants, which is a statutory duty to informants—as the Circuit Court for the Ninth Circuit has stated—I don't think that public policy feature has been outweighed by the necessity of the defendant's having this witness disclosed—having the name of this informant disclosed.

Mr. Reinhardt: Your Honor, as I view the Roviaro case, it is very factually similar to the present case, in that——

The Court: What is the citation of it?

Mr. Reinhardt: I'm sorry, your Honor, I don't have it. I can supply you with it later this afternoon.

The Court: How do you spell it?

Mr. Reinhardt: R-o-v-i a r-o. U. S. v. Roviaro.

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[fol. 86] Mr. Bevan: Your Honor, it is with some embarrassment that I approach you again.

Previously the Narcotics Bureau told me that it did not want to identity of this informant disclosed, and now it has been stated to me that there was no objection on behalf of that Bureau, and consequently there will be no objection on [fol. 87-89] behalf of the United States Attorney.

The Court: Then there is no objection on the part of Exhibit E?

Mr. Bevan: That is correct, your Honor, and I have no objection—I withdraw my objection that was made to the question put to the witness by defense counsel.

Mr. Reinhardt: Your Honor, then, in the absence of the jury, I wonder whether we can be furnished with the address or the present whereabouts of that defense witness so that we may subpoena him—that is, of the confidential informant, so that we may subpoena him to testify for the defense if desirable.

The Court: I don't know whether they know the address.

Mr. Reinhardt: If they know.

Mr. Bevan: I have been informed by the representative of the Narcotics Bureau that they will have that man, Mr. Singh, here tomorrow morning, your Honor, so that he would be available for testimony on cross examination.

The Court: Very well.

Mr. Reinhardt: Thank you.

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[fol. 90] Los Angeles, California, Wednesday, August 6, 1958, 10:00 A.M.

The Court: United States v. Saldana.

Let the record show the defendant is present in person

and by counsel, and the jury is present and each one in his or her place.

Proceed.

Mr. Bevan: I would like to say, your Honor, in connection with the matter advanced last evening, we did have objections to the production of the name of the special employee, as we discussed last night. The government has withdrawn those objections, and he is here in the courtroom for the use of the defense if that is necessary or desirable.

The Court: Mr. Licuanan will resume the stand.

JAYME R. LICUANAN, called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination (continued)

The Court: I think the question that is pending is: What was the name of the special employee?

The Witness: Roy Singh, S-i-n-g-h.

The Court: Is he present in court?

The Witness: Yes, sir.

[fol. 91] The Court: Will you stand up, Mr. Singh.

(A man stands up in the courtroom.)

The Court: You may be seated.

Mr. Reinhardt: Your Honor, may I request at this time that Mr. Singh be excluded from the courtroom during the remainder of this witness' testimony?

The Court: Yes. The witness will be excluded from the courtroom. Be available, however.

* * * * * * *

By Mr. Reinhardt:

Q. Mr. Licuanan, I believe you testified on direct examination that you had been an employee of the Narcotics Bureau for the past two years.

A. Approximately two years.

Q. What was your occupation before that?

Mr. Bevan: Objected to as irrelevant, your Honor.

The Court: Objection sustained.

By Mr. Reinhardt:

Q. Will you tell us the circumstances of your first con-
[fol. 92] tact with Mr. Saldana?

A. On April 28th, approximately 4:30 p.m., I met defendant Saldana at 445 South McBride Street.

Q. And you were accompanied by Mr. Singh at that time?

A. That's right, sir.

Q. Did you take any written documents with you to Mr. Saldana?

A. I had.

Q. Can you tell us what was the nature of those documents?

A. It was a letter of introduction.

Q. From whom was this letter of introduction to Mr. Saldana?

A. Julio Contreras.

Q. Were you with Mr. Saldana the first time contact was made with him on the afternoon that you visited him?

The Court: I don't understand the question.

By Mr. Reinhardt:

Q. I understand that you and Mr. Singh went together to see Mr. Saldana.

A. That's right, sir.

Q. Did Mr. Singh go in alone, or did you accompany him?

A. First Mr. Singh went in by himself, to determine whether it was——

Q. That answers the question. Mr. Singh went in alone. Then Mr. Singh returned with Mr. Saldana?

[fol. 93] A. That's right, sir.

Q. Did you, at the time that Mr. Saldana and Mr. Singh returned—isn't it true that you then told Mr. Saldana that his cousin Julio Contreras was then in jail and that Julio Contreras had asked you to come to Mr. Saldana for the purpose of raising some money to bail Mr. Contreras out of jail?

A. Yes, sir.

Q. And your explanation of why you wanted Mr. Saldana to obtain drugs for you was in order to aid his cousin who was in jail and needed the money for his legal defense?

A. I don't believe I put it that way. I believe I—as I

recall it, I made it clear to Mr. Saldana that I was a dope peddler, that I was dealing in dope, and I was looking for a source of supply and that, if I was able to purchase some heroin, that I would then take some of the profits, my profits from the sale of this drug, and would then help Julio Contreras. I was not obligated to Julio Contreras. That is the way I placed it before Mr. Saldana.

Q. You informed Mr. Saldana that Julio Contreras was in jail and that he was unable to get out of jail because of lack of sufficient funds, and that, if Mr. Saldana went through with this transaction, he would be able to assist Mr. Contreras?

A. I don't believe I quite understand what you mean.

Q. Well, I'll break up the question into parts.

[fol. 94] It is not true that you informed Mr. Saldana that his cousin Julio Contreras was in jail?

A. Yes.

Q. And you further informed Mr. Saldana that his cousin Julio Contreras did not have the funds which would be necessary to enable him to get out of jail on bail?

A. That's right.

Q. And you informed Mr. Saldana that if he were able to procure drugs for you that that would be a possible way of getting Mr. Contreras out of jail?

A. I don't believe it was—I don't believe it was that way. I didn't put it to him that way.

Would you like me to relate to you exactly what the conversation was at that time? And then maybe it would explain to you—would answer your question.

Mr. Reinhardt: Well, I think we have enough of the conversation at this time.

The Court: Well, he had just as well do it. If you don't, the Government will take up time and ask him afterward.

Mr. Reinhardt: Well, we may come back to that, your Honor.

The Court: All right.

By Mr. Reinhardt:

Q. Isn't it also true, upon your initial request to Mr. Saldana, he informed you that he was not engaged in the [fol. 95] traffic of narcotics?

A. That is not true.

Q. Did Mr. Saldana tell you he was engaged in the traffic?

A. Yes. Mr. Saldana at that time stated to me that he "Why go to the man when I know the source of the man's supply?" He then told me, "Why, only yesterday I sold 20 ounces to a kitty." He said, "Then I got another deal for another 20 ounces for $2,500. Deal with me." That's what he said.

At that time I was going to go out to him for him to introduce me to another man. He refused to introduce me, but instead told me, "Why go to him when I can do it for you?"

Q. Isn't it true that when you went to Mr. Saldana, you had no information that he was engaged in the traffic of narcotics?

A. Yes, sir; I have known that he was—he had been convicted several times and had been involved in narcotics——

Mr. Reinhardt: Your Honor, may I ask that that remark be stricken from the record?

Mr. Bevan: That was specifically asked for, your Honor.

Mr. Reinhardt: No. I'm sorry, your Honor——

The Court: Yes, it was.

Read the question again.

(The last question was read, as follows:

[fol. 96] ("Q. Isn't it true that when you went to Mr. Saldana, you had no information that he was engaged in the traffic of narcotics?")

The Court: He can proceed, but the answer will remain. You asked for it, and he can explain his answer.

Mr. Bevan: I believe he was interrupted—

The Court: And he was.

Mr. Bevan: —and I think he can proceed to finish his answer as to the information he had at the time.

Mr. Reinhardt: May I have an objection to that, your Honor?

The Court: Yes.

You can go ahead and finish.

The Witness: Prior to the time that I met Leonard Saldana, I checked with the Sheriff's office for his record, and at that time I found out that he was involved in narcotics.

The Court: Had he been convicted?

The Witness: I don't recall offhand, but I believe he had been involved or convicted of narcotics, for possession of heroin in Los Angeles.

The Court: That was your information?

The Witness: That's right, sir, to the best of my recollection.

By Mr. Reinhardt:

Q. You don't know now that he had been convicted of possession of heroin, do you?

[fol. 97] A. I've arrested so many people since I've arrested Mr. Saldana that I can't recall all those facts.

Q. But you recalled it well enough to state just now that that was your information?

A. I believe—to the best of my knowledge right now, I believe that his record showed that he had some—he was involved in some narcotic violations.

The Court: But you don't know whether or not he was actually convicted?

The Witness: No, I don't recall whether he was convicted, but I recall that there was some indication in his rap sheet for suspicion of state narcotic——

By Mr. Reinhardt:

Q. Do you have any idea when, if there was such a mark on his record of being arrested for suspicion—when that would have been?

A. Not right now. I can refresh my memory with the records.

Q. No. I'm asking you, do you have any idea right now?

A. No, sir. As I said, I've arrested so many people since then that I don't recall.

Q. What other information did you have at that time when you went to him that Mr. Saldana was then engaged in the traffic of narcotics?

A. No other information.

Q. No other information?

[fol. 98] A. No, sir.

Q. You say you went to Mr. Saldana not in order to obtain any narcotics from him?

A. That's right, sir; not from him.

Q. Can you tell me how Mr. Singh was dressed when he accompanied you?

A. Khaki pants, T-shirt, and a blue tanker jacket, nylon, I believe it was.

Q. I'm sorry. Blue what?

A. A blue jacket.

Q. Mr. Saldana did not have any drugs in his possession when you approached him; is that correct, as far as you know?

A. No, sir. I didn't see— I didn't search him at that time.

Q. No. As far as you know, he didn't have any?

A. No.

Q. And Mr. Saldana told you he didn't have any drugs?

A. No, I don't believe he did. He didn't tell me anythink about whether he had it in his possession or not. I don't——

Q. He didn't tell you to come back at 8:00 o'clock because he had to make a telephone call in order to get the drugs?

A. Yes.

Q. In other words, he did tell you that he didn't have [fol. 99] any drugs in his possession?

A. No. He just told me to come back at that time and he'd have it ready.

Q. He didn't tell you he had to make a telephone call to get the drugs?

A. Yes, he did. He told me he was going to make a telephone call.

Q. In order to get the drugs?

A. To get the drugs delivered to him.

Q. At no time when you—in any of these transactions, as far as you know, did Mr. Saldana have any drugs in his possession or on his premises, as far as you're aware? Is that correct?

A. I didn't see any in his possession.

Q. And as far as you know, in every instance——

The Court: Do you mean, except when he——

The Witness: When he delivered the——

The Court: Yes.

The Witness: When he delivered the exhibits to me.

By Mr. Reinhardt:

Q. And insofar as you're aware, in every instance Mr. Saldana made contact after talking to you, made contact with the source of the drugs and arranged to get them for you?

A. Well, I think he usually makes a phone call, yes. He makes a phone call before the drugs are delivered.

[fol. 100] Q. And all of these transactions resulted from your initial conversation with Mr. Saldana after he talked to the informant, Mr. Singh?

Mr. Bevan: Objected to, as calling for a conclusion of the witness as to how these sales came about and from what source.

The Court: Sustained.

By Mr. Reinhardt:

Q. In point of time, all of these transactions took place after your initial discussion with Mr. Saldana, in which you told him that his cousin was in jail and needed money to get out on bail?

A. I believe—well, I don't know whether that's the reason he had for selling me the stuff.

Q. I just asked you whether these conversations took place after that time.

A. Yes.

Q. Now, Mr. Saldana told you that the price of the drugs would be $200 an ounce; is that correct?

A. Yes, sir.

Q. Did not Mr. Saldana also tell you at that time that he would get these drugs for you but that he would make no profit from the sale?

A. Well, I don't know whether that was true or not.

Q. You don't remember that?

The Court: Did he tell you that?

[fol. 101] The Witness: I don't recall, sir.

The Court: Did he tell you that he would make no profit from the sale?

The Witness: I don't recall.

The Court: Was it ever mentioned?

The Witness: I don't recall. To the best of my knowledge, I don't think—well, yes. It was on the second purchase, the purchase of the Exhibit 2-A.

The Court: What did he say then?

The Witness: I believe he said, "Well, I'm not making any bread on this thing. If I'm making any, it would be very small."

By Mr. Reinhardt:

Q. Isn't it true that Mr. Saldana told you, on the occasion of the first meeting, that he was going to arrange for you to get these drugs for his cousin, in order to assist his cousin, and that he would not make any money out of this deal at any time?

Mr. Bevan: That is objected to, as a combination of a series of questions, your Honor. I think it could more accurately be answered by having the question split up.

The Court: Let me hear the question.

(The pending question was read.)

The Court: I think the question is clear. Objection overruled.

The Witness: I believe he mentioned that, that he was [fol. 102] not making any money out of it, out of this transaction.

By Mr. Reinhardt:

Q. You mentioned that there was a 1958 station wagon: is that correct?

A. Yes, sir.

Q. Used in this deal?

A. Yes.

Q. Do you know who owned that station wagon?

A. Albert Arroyo Palomino.

Q. Have you ever seen Mr. Saldana's car?

A. I don't believe I have ever seen him driving a car.

Q. You have never seen him driving a car?

A. No, sir.

Q. But you were with him in vehicles many times or several times throughout these dealings, yet it was never in his car, is that right?

A. That's right, sir.

Q. Are you aware of how much money Mr. Saldana had in his possession when he was arrested?

A. No, sir. I didn't have any part in searching him, except that—after I placed him under arrest, he ran; he was apprehended——

Q. No. I just asked whether you knew.

A. I didn't search the defendant.

Q. You didn't search the defendant?

A. No, sir.

[fol. 103-104] Q. Do you know the name of the officer who arrested or who searched Mr. Saldana?

A. I don't know because, as soon as the arrest, went down—Mr. Segura and myself left the area and left all the details for the other officers.

Q. All right. From your knowledge of this case, are you aware that Mr. Saldana is impecunious?

A. What's that word, sir?

Q. Are you aware of Mr. Saldana's insolvent financial position?

A. He never told me that.

Q. Have you engaged in similar transactions, accompanied by the informant, Mr. Singh, previously?

Mr. Bevan: Objected to as irrelevant and immaterial.

The Court: Objection sustained. It is wholly irrelevant and immaterial.

. . . . . .

[fol. 105] Mr. Bevan: Would you like to examine this Exhibit No. 5 for identification, counsel?

Mr. Reinhardt: Yes, thank you.

(Defendant and counsel examining document.)

Mr. Reinhardt: Your Honor, may we approach the bench before this exhibit is shown?

The Court: Yes.

(The following proceedings were had at the bench:)

Mr. Reinhardt: Your Honor, I would like to make the same objection——

The Court: Let's see it.

Mr. Reinhardt: —to the use of this document that I made to the question asked concerning his previous convictions, in that the question I asked, which your Honor ruled opened this up, was, had he any information that he was actively engaged—I believe; was it actively or just engaged—in drug transactions?

Mr. Bevan: I don't recall.

The Court: Your question is pretty broad.

Mr. Reinhardt: This is 10 years earlier, your Honor, 10 years earlier; and this is the only basis that he had for saying he was engaged in the traffic of drugs, I consider [fol. 106] that objectionable.

The Defendant: It wasn't heroin either.

Mr. Bevan: The only purpose that I was planning to use this for, your Honor, was to ——

The Court: Refresh his recollection?

Mr. Bevan: —refresh his recollection, if he desired to do so, from records.

The Court: I think so. Objection overruled.

(Whereupon, proceedings were resumed in open court as follows:)

Redirect examination.

By Mr. Bevan:

Q. Mr. Lieuanan, you were asked by defense counsel on cross examination as to whether you knew, at the time you first went to Mr. Saldana, whether he had previously been convicted of some narcotic charge.

Mr. Reinhardt: I object, your Honor. I did not ask the witness that.

The Court: No, he did not ask him that.

The question was with relation to what information—whether or not he had any information concerning the defendant Saldana.

Mr. Bevan: Then I thought, your Honor——

Mr. Reinhardt: No, your Honor; that also was not the [fol. 107] question.

The Court: All right. Let's find the question. Do you think you can find it?

Mr. Bevan: Your Honor, may I add some comment?

The Court: Read the question, if you can find it.

(The question referred to was read, as follows:

("Q. Isn't it true that when you went to Mr. Saldana, you had no information that he was engaged in the traffic of narcotics?")

Mr. Bevan: Your Honor, what I had in mind was immediately following the reading of that question.

The Court: All right.

(The record was further read, as follows:

("A. Yes, sir: I have known that he was—he had been convicted several times and had been involved in narcotics———

("Mr. Reinhardt: Your Honor, may I ask that that remark be stricken from the record?

("Mr. Bevan: That was specifically asked for, your Honor.

("Mr. Reinhardt: No. I'm sorry, your Honor—

("The Court: Yes, it was.

("Read the question again.

((The last question was read . . .)

("The Court: He can proceed, but the answer will [fol. 108] remain. You asked for it, and he can explain his answer.

("Mr. Bevan: I believe he was interrupted—

("The Court: And he was.

("Mr. Bevan: —and I think he can proceed to finish his answer as to the information he had at the time.

("Mr. Reinhardt: May I have an objection to that, your Honor?

("The Court: Yes.

("You can go ahead and finish.

("The Witness: Prior to the time that I met Leonard Saldana, I checked with the Sheriff's office for his record and at that time I found out that he was involved in narcotics.

("The Court: Had he been convicted?

("The Witness: I don't recall offhand, but I believe he had been involved or convicted of narcotics, for possession of heroin in Los Angeles.

("The Court: That was your information?

("The Witness: That's right, sir, to the best of my recollection.

(By Mr. Reinhardt:

("Q. You don't know now that he had been convicted of possession of heroin, do you?

("A. I've arrested so many people since I've ar-

[fol. 109] rested Mr. Saldana that I can't recall all those facts.

("Q. But you recalled it well enough to state just now that that was your information?

("A. I believe—to the best of my knowledge right now, I believe that his record showed that he had some—he was involved in some narcotic violations.

("The Court: But you don't know whether or not he was actually convicted?

("The Witness: No, I don't recall whether he was convicted, but I recall that there was some indication in his rap sheet for suspicion of state narcotic——

(By Mr. Reinhardt:

("Q. Do you have any idea when, if there was such a mark on his record of being arrested for suspicion—when that would have been?

("A. Not right now. I can refresh my memory with the records.")

Mr. Bevan: That's all, your Honor. That is the specific portion I referred to.

By Mr. Bevan:

Q. Could you refresh your memory as to that event, Mr. Lienanan, by taking a look at Exhibit No. 5 for identification? Do not say anything; just look at it for a moment.

A. Yes, sir. (Witness complies.)

Q. Is your memory now refreshed as to whether or not, [fol. 110] before you went to Mr. Saldana, you knew that he had been convicted of a charge of——

The Court: Whether he had information.

By Mr. Bevan:

Q. —whether you had information to the effect that Mr. Saldana had been convicted of a state narcotic offense?

A. Yes, sir.

The Court: All right. Had he?

The Witness: Yes, sir.

By Mr. Bovan.

Q. Now, please relate for us the exact conversation, as you can now recall it, that occurred at the time that you were introduced to Mr. Saldana by Mr. Singh. Please tell us what occurred then.

A. As I remember it now, we arrived in there approximately 4:30 p.m. We parked in front of the house of defendant Saldana.

The special employee left the Government vehicle, went to the front of the house, knocked. There was no response, and he then went to the rear.

He was gone from my view for approximately a minute, at which time I then observed the special employee and defendant Saldana walking from the rear on the side of the house, and sit on the front steps of the house where they conversed, I believe it was, two or three minutes.

Q. What was the conversation you had with the defendant [fol. 111] Saldana?

A. Then, when Saldana and the special employee approached the Government vehicle, I was introduced to Saldana as, "This is Sal. This is Leonard." And I said, "How are you?"

And Saldana then told me, "I understand you want to pick up some stuff." And I said, "Yes."

And then, after that, the conversation shifted to defendant Saldana asking me about Julio. Well, I then referred to him: "Yes, I heard he's in jail, and I would like to help him if I can." "But," I said, "I'm dealing in stuff, and whatever profit I make out of my transactions, then I would then help in raising the money or contributing to the premium of the bond."

I then inquired from him about Pancho.

He then told me, he said, "No, man. I know where Pancho's getting his stuff."

Q. Who is Pancho?

The Court: Was that the only name he used?

The Witness: Yes.

The Court: Pancho?

The Witness: Yes, it was only Pancho.

The Court: Go ahead and tell the conversation.

The Witness: I then inquired from him——

The Court: What did he say?

[fol. 112] The Witness: He said, "No, man, don't deal with Pancho. His stuff is no good." He said, "I know the man that Pancho gets it from."

I said, "O. K."

And then he then asked me how much I wanted. He said, "Come on. You want a half, one, two, three? Tell me." He said, "I can give you all you need, but I got to make the phone call right now so we can get this thing delivered."

I then told him, I said, "Well, I guess I've got enough bread"—"bread" referring to money—"for two."

He said, "O. K." He said, "Wait a second."

So then he went inside and—where he disappeared for approximately a minute, and then I next observed him by the door holding a telephone and apparently talking in the telephone; I was too far away to hear the conversation. After which——

Mr. Reinhardt: Your Honor, doesn't this answer go beyond the scope of the question? I think the question was asked about the conversation. It seems to me the conversation——

The Witness: Well, that's part of the conversation.

The Court: No, I don't think so.

Go ahead.

The Witness: Then he returned and told me, "Well," he said, "come back at about 8:00 o'clock."

The Court: When did he say this that you testified to a [fol. 113] while ago, "why do you deal with somebody else? Deal with me. Yesterday I sold 20 ounces"?

The Witness: Yes, sir; I'm coming to that, your Honor.

The Court: Oh.

The Witness: Then, when he came back, he said, "Well, man, this kitty's really good," and he said, "Why, only yesterday" or "the day before yesterday," he said, "I got rid of 20 ounces to one of my best customers." And he said, "I've got another customer now that wants another 20 ounces. And, man, this kitty can really supply you all you need."

By Mr. Bevan:

Q. What does the term "kitty" mean in the narcotic trade, Mr. Lieuanan?

A. The source of supply.

Q. The source of supply of what?

A. Heroin.

Mr. Bevan: That is all the questions I have, your Honor.

The Court: Further cross?

Mr. Reinhardt: Yes, your Honor.

Recross-examination.

By Mr. Reinhardt:

Q. Mr. Lieuanan, your memory has been refreshed by the document you have seen, that is, as to certain information concerning the defendant's prior narcotic record; it that correct?

[fol. 114] A. Yes, sir.

Q. Have you learned the year of his prior narcotic conviction?

A. Yes, sir.

Q. What is that year?

A. 1947.

Q. And is that the information that led you to believe that he was engaged in the traffic of narcotics in 1958?

A. No. I have had other reliable information, which was approximately—prior to the meeting with Saldana, I'd heard from the deputy sheriffs working narcotics in East Los Angeles that there was a dealer there by the name of Leonard, and was living in the general vicinity of McBride, that was actively engaged in the transaction of heroin.

Q. Can you tell us the names of the deputy sheriffs who gave you that information?

A. I don't recall offhand now. This was during coffee time in East Los Angeles, where general conversations turn to who are the dealers.

Q. You have never put that information into any Government report, have you?

A. No, sir.

Q. This is the first time that you have ever told anyone that you had that infomation, and that you got it at a coffee discussion with some unknown sheriff?

[fol. 115] A. Oh, no sir. No, sir. My partners—I always discuss these things with my partner, telling him that there is now a good dealer in East Los Angeles by the name of Leonard.

Q. You've made about five reports to the Government concerning Mr. Saldana, haven't you?

A. I made those reports in regards to the purchases.

Q. Yes. And nowhere in those reports did you ever mention that you had had information that it was generally known that Mr. Saldana was dealing in narcotics?

A. That's not—no, sir. The reports—the 184 reports of the purchases, the events and the transactions——

Q. Yes, but——

A. —are not for information; no, sir.

The Court: Is that generally put in the report, your previous information?

The Witness: It all depends on the—it all depends on the agent, your Honor.

By Mr. Reinhardt:

Q. And you have no way of letting us know the names of any people who might have told you, prior to the time you approached Mr. Saldana, that he was actively engaged in narcotics?

A. I believe it was—to the best of my recollection, I think it was Deputy Peterson——

Q. Deputy Peterson?

[fol. 116] A. —that told me about a man out in East Los Angeles whose name was Leonard.

Q. Deputy Peterson of the Los Angeles Sheriff's office?

A. That's right, sir. He's currently teamed up with our team, assigned to our team.

LOUIS PETERSON, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * * * * * *

Direct examination.

By Mr. Bevan:

Q. What is your business or occupation, Mr. Peterson? [fol. 117] A. I'm a deputy sheriff employed by the County of Los Angeles, presently assigned to the Sheriff's narcotic detail; our headquarters, it's in the Hall of Justice, Los Angeles.

Q. I see. Do you ever work the East Los Angeles area, sir, in the performance of your duties?

A. Yes, sir, I have.

Q. For how long have you been with the Sheriff's office?

A. Approximately five and a half years.

Q. Did you ever have a conversation with Mr. Licuanan, the witness who just left the stand, concerning Leonard Saldana?

A. Yes, sir, I have.

Q. Did you have occasion to perform some duties with respect to this case, Mr. Peterson?

A. Yes, sir.

Q. And did you have occasion to perform those duties on May 7, 1958?

A. Yes, sir I did.

Q. Where were you when you performed those duties?

A. I was parked to the north and to the east of 445 South McBride.

Q. At approximately what time of day or night, sir?

A. Approximately 4:15 p.m., as I recall, on this date, I parked at this location.

Q. Could you keep your voice up just a little bit? [fol. 118] A. Yes, sir.

Q. You were parked in a vehicle?

A. Yes, sir, in an undercover Government vehicle.

Q. Were you with anyone else at this time, if you recall?

A. No, sir; I was by myself at this time.

Q. And what did you see, Mr. Peterson, if anything?

A. I saw Agent Licuanan drive to the location in a Gov-

ernment vehicle, park his vehicle, and go to 445 South McBride and engage the defendant Saldana in a short conversation.

Q. Where did that apparent conversation occur, between those two gentlemen?

A. On the front porch of this location.

Q. Then what happened next, Mr. Peterson?

A. Agent Licuanan left the area, and I remained in the undercover vehicle at this location.

Q. What did you next see happen, if anything?

A. At approximately 6:55 p.m., Agent Licuanan returned to the location and went to the front porch, and I believe he was admitted inside the house.

At about 7:00 p.m., I observed a 1958 gray and white Ford station wagon, driven by defendant Palomino, park in front of this location.

The defendant Saldana then came out and had a short [fol. 119] conversation with Palomino, and returned to the house.

Palomino left the location, going south on McBride; he turned west on Eagle, and I lost him from view.

About a minute later, Agent Licuanan left 445 South McBride, entered his vehicle, and left the area.

About a minute later, defendant Saldana left 445 South McBride, ran south on McBride to Eagle, and I lost him from view.

I then left the area.

Q. Was that about the extent of your investigative activities on that day, May 7th?

A. Yes, sir, it was.

Q. Did you have occasion to perform any similar activities on May 13, 1958?

A. Yes, sir.

Q. And where—you at the time you first commenced such activities?

A. At the same location, parked in approximately the same spot.

Q. At approximately what time of day or night, sir?

A. I believe it was around 5:30 p.m.

Q. And what did you see or hear, Mr. Peterson?

A. I observed Agent Licuanan drive to this location in a Government vehicle. He went to the front porch and was greeted by defendant Saldana.

[fol. 120] Saldana then—they had a short conversation. Saldana then went back inside 445 South McBride, came back out a short time later, and they left in Agent Licuanan's vehicle.

That's all that I observed on this date.

Q. Did you have occasion to perform any investigative duties with respect to this case on May 21, 1958?

A. Yes, sir, I did.

Q. At what time of day or night?

A. I believe it was approximately 2:15 p.m. on this date.

Q. And where were you, Mr. Peterson?

A. I was parked in approximately the same location, to the east and north of 445 South McBride.

Q. What did you observe take place, sir?

A. When I arrived at this location in the undercover vehicle, I observed defendant Palomino and defendant Saldana seated in the 1958 Ford station wagon in front of 445 South McBride.

About two or three minutes later, Agent Licuanan and Deputy Segura arrived in a Government vehicle and parked to the south of the Ford station wagon.

Saldana then left the station wagon and met with Agent Licuanan who had also alighted from his vehicle. They conversed for a short time, and Saldana returned to the station wagon.

[fol. 121] Agent Licuanan walked by the station wagon and up to the front porch of 445 South McBride.

Agent Licuanan then came back down and said something to Saldana in the station wagon.

Defendant Palomino then left the area alone, and Saldana and Agent Licuanan and Deputy Segura left shortly thereafter. They returned about five minutes later and remained seated in the vehicle. I believe Saldana did get out one time.

About five or ten minutes after this, I observed the defendant Palomino drive south on McBride from 3rd Street and stopped his vehicle in front of the location, 445 South McBride.

Defendant Saldana and Agent Licuanan then approached the—or Saldana approached the station wagon first, with Licuanan following shortly thereafter.

I observed the defendant Saldana have a brown paper bag in his hand, and, after Agent Licuanan pulled his gun,

he threw this bag at Agent Licuanan and ran to the rear of 442 South McBride.

At this time State Narcotic Inspector Velasquez and myself gave chase and apprehended defendant Saldana at the rear of this location and returned him to the station wagon.

Q. By the way, on or before April 28th of this year, had you ever furnished information about Mr. Saldana to Agent Licuanan?

[fol. 122] A. Yes, sir, I had.

Mr. Bevan: No further questions.

The Court: Cross-examine.

Cross-examination.

By Mr. Reinhardt:

Q. While Mr. Licuanan was testifying from the stand and you were sitting back here, did you make any signal to Mr. Licuanan?

A. No, sir.

Q. Did you hear Mr. Licuanan's testimony?

A. I've heard part of it this morning? I left the building for a half an hour or so.

Q. Were you in the courtroom when Mr. Licuanan first stated that he was unable to remember the name of the deputy sheriff who had furnished such information to him?

A. Yes, sir, I was.

Q. And you were sitting in that row when Mr. Licuanan remembered that you were the one who had furnished that information?

A. Yes, sir, I was.

Q. And you heard all of his testimony in that regard?

A. Yes, sir, in that regard.

Mr. Reinhardt: No further questions.

Mr. Bevan: I have none, your Honor.

[fol. 123] STUART NADLER, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

. . . . . .

Direct examination.

By Mr. Bevan:

Q. What is your business, Mr. Nadler?

A. I'm a Treasury agent atached to the Bureau of Narcotics.

Q. Your office is here in this building?

A. Yes, sir; Room 1755.

Q. Did you have occasion to perform any duties with respect to this case on April 28, 1958?

A. Yes, sir, I did.

Q. And where were you at the time you first performed such duties?

A. In the vicinity of 3rd and McBride Streets.

Q. At what time of day or night, sir?

A. At approximately 6:55 to 7:00 p.m.

[fol. 124-125] Q. What did you see at that place, if anything?

A. I saw Agent Licuanan and Special Employee Singh approach 445 McBride in a vehicle, Government vehicle; and I subsequently saw Special Employee Singh emerge from the vehicle, and, after a little bit, Agent Licuanan emerged from the vehicle.

. . . . . .

[fol. 126] Q. Did you have occasion to perform some duties with respect to this case on May 7th, Mr. Nadler?

A. Yes, sir.

Q. At what time of day, sir?

A. About 7:00 p.m. Well, it was earlier in the day, actually. About 5:00, Agent Licuanan went to 445 South McBride and, after about 10-minute interval, he emerged from there and we met him at another location, and he told us nothing would be happening——

Q. Well, you had a conversation with him then; is that right?

A. Yes, sir.

Q. And did you later see him in the vicinity of 445 South McBride Street that day?

A. Yes, sir, at about 7:00 p.m.

Q. And what did you observe at that time?

A. We observed his vehicle parked. I didn't actually see him enter the building. And, subsequently we observed a 1958 Ford station wagon, driven by Albert Arroyo Palomino, enter the block and park in the vicinity of 445 South McBride.

The station wagon subsequently left, and, right after that, [fol. 127] Agent Licuanan left—we saw the vehicle drive off. We were too far away to actually see anything.

Q. Directing your attention to May 21, of this year, did you have occasion to perform some investigative duty on that day?

A. Yes, sir.

Q. And where were you at that time that you first commenced such duty?

A. I was in a Government automobile with another agent. We were parked in the vicinity of 445 South McBride.

Q. When, sir? What time of day?

A. At about 2:30 in the afternoon.

Q. What did you observe or hear at that place?

A. We were informed that the 1958 Ford station wagon, which I mentioned previously, had left the area; we were informed by radio. We attempted to locate it, and we subsequently learned that it was in the vicinity of an address on Ganahl Street. We proceeded to that area and saw the vehicle leaving the Ganahl Street address, and picked it up in the vicinity of City Terrace, and we followed it back to the vicinity of 445 South McBride.

Mr. Bevan: No further questions.

The Court: Cross-examine.

Mr. Reinhardt: Yes.

[fol. 128] Cross-examination.

By Mr. Reinhardt:

Q. You were not present, were you, at the initial conversation between Mr. Saldana and Agent Licuanan on May 28—April 28th?

A. Within audible view?

Q. Yes.

A. Or range. No, sir.

Q. You were unable to determine then, and you have no information on the subject of the method whereby Mr. Saldana first agreed to sell the narcotics to——

The Court: "Method" calls for a conclusion.

By Mr. Reinhardt:

Q. You heard nothing——

A. No.

Q. —which would give you any information as to the arrangements made between the defendant and Agent Licuanan?

Mr. Bevan: It's been asked and answered, your Honor.

The Witness: No, sir, I did not.

Mr. Bevan: He stated he was not within audible range.

Mr. Reinhardt: No further questions.

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[fol. 129] VICTOR J. SEGURA, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bevan:

Q. What is your business or occupation, Mr. Segura?

A. I'm deputy sheriff for the County of Ventura.

Q. How long have you been so employed?

A. Five years, sir.

Q. Did you have occasion to perform some official duties with respect to this case on May 21, of this year?

A. Yes, sir.

Q. Approximately at what time did you commence those duties?

A. It was about 2:45 or 2:55 p.m.

Q. And where were you at this time?

A. I was with Agent Licuanan, and we were in a Government car on South McBride Street at about, oh, two houses south of that address.

Q. Did you have occasion to see the defendant at that [fol. 130] time?

A. I did, sir.

Q. Tell us how you happened to see him.

A. When Agent Licuanan and myself arrived at this address, we observed—or I observed a station wagon parked across, or rather in front of 445 McBride, with two individuals in it. And Agent Licuanan stated to me that——

Q. Well, he told you something?

A. Yes, sir.

Q. Then what happened next?

A. Well, we stopped, and the now defendant got out of the station wagon, and Agent Licuanan left the Government vehicle and went out on the sidewalk and met the now defendant.

The Court: What date was this?

The Witness: That was on May the 21st, of this year.

By Mr. Bevan:

Q. Then what happened after that, Mr. Segura?

A. I observed Agent Licuanan and the defendant having a conversation for just a short while, and then I observed both go toward the entrance of the—walk to the house. Agent Licuanan went to the porch, and the defendant walked to the station wagon. I did not see what he did in the station wagon at the time; there was another car behind us right then.

And then I observed Agent Licuanan come back to the sidewalk and have another short conversation with the [fol. 131] defendant and then they came to the Government vehicle.

Q. Then what happened, Mr. Segura?

A. Agent Licuanan introduced the defendant to me and stated that I was his uncle.

Q. You are not his uncle, are you?

A. No, sir.

Q. Then what happened?

A. A short conversation ensued between the two. I did not take much part in that conversation, but I was only observant in it. This was relevant to the purchase——

Q. Did you hear what was said, Mr. Segura?

A. Yes, sir.

Q. What was said at that time?

A. That Agent Licuanan introduced me and stated that I wanted to pick up some stuff, and that I had the money for that particular transaction. At the time——

Q. Did Mr. Saldana state anything at that time?

A. He was listening at that time.

Q. I see. Proceed.

A. At the time Agent Licuanan stated that I would be interested in five or even seven pieces, or thereabouts, that I could buy at that time.

And then the defendant stated that he would be able to furnish that for me, but he would have to talk to the man first.

[fol. 132] Q. Then what happened after that, Mr. Segura?

A. The defendant stated that we could go around the block and buy some beer. The three of us got into the vehicle; we went around the block to a street, I believe the name is McDonnell, and we did stop at a small grocery store. The defendant purchased, I believe it was, a six-package of beer.

We went back to the location. We parked in front of the address, and just a few minutes went by, and then this station wagon—a man within the station wagon drove just a few feet behind our vehicle, and the defendant stated that, "Just a moment," or that the man was there, and he would be right back.

He left our vehicle and traveled toward the station wagon.

Agent Licuanan got out of the Government vehicle. I stayed in it, but I looked toward the rear through the rear window and observed the man, now known as Palomino, reaching with an object or a brown paper wrapping of some sort, and observed the defendant reaching into the car to receive it.

About that time, Agent Licuanan stated to me, "All right, let's make the arrest," and we both proceeded—he proceeded ahead of me. I opened my side of the car—I was driving—and I went to the driver's side and also assisted in placing Mr. Palomino under arrest.

[fol. 133] Q. I place before you Exhibit 4-A for identification. Can you identify that for us, Mr. Segura?

A. Yes, sir. I have my initial "V" on this one, on the outside.

Q. When was the first time that you saw that exhibit?

A. This was at the time that it was thrown to Agent Licuanan, in the evening, that same evening when I initialed this. Here you are, right here (indicating).

. . . . . .

Cross-examination.

By Mr. Reinhardt:

Q. Mr. Segura, you were not present at the conversation between Agent Licuanan and the defendant when the original arrangement for the purchase of drugs by the Government was made; is that correct?

A. Sir, I do not understand that question clearly. By this—is that the actual purchase at this moment?

Q. No. On April 28th.

[fol. 134] A. No, sir, I was not.

Q. You were not present?

A. No, sir.

. . . . . .

Mr. Bevan: The Government rests.

The Court: Does counsel wish to approach the bench?

Mr. Reinhardt: Yes, your Honor.

(The following proceedings were had at the bench:)

Motion for Judgment of Acquittal and Ruling Thereon

Mr. Reinhardt: I would like to make a motion for the judgment of acquittal on the grounds that the defense of entrapment is apparent in the Government's presentation of its case, and it is established therein.

The Court: Any other grounds? Statutory grounds, insufficiency of the evidence to support the charges?

Mr. Reinhardt: Yes, your Honor, and all other grounds which may occur to your Honor.

The Court: The question of entrapment is a question of fact.

Mr. Reinhardt: Yes.

The Court: It will be decided by the jury, and the motion is denied on that ground.

In connection with your motion for the dismissal on the [fol. 135] ground that the evidence does not support the charges, I do not think there is sufficient evidence to support Count 1, conspiracy.

Mr. Bevan: Well, I would like to say, your Honor, that I think it is apparent from the evidence that the person delivering the narcotics——

The Court: Everything here would have to be deduced by an inference——

Mr. Bevan: That is true.

The Court: —and by people who saw somebody whom they later learned to be so and so, and I don't think it is sufficient to permit Count 1 to go to the jury. So your motion for judgment of acquittal as to Count 1 is granted on the ground of insufficiency of evidence.

The motion is denied as to Counts 2, 3, 4, and 5.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Reinhardt: Yes, your Honor.

May we now have a ——

The Court: Instructions.

Mr. Reinhardt: Oh, instructions?

The Court: Do you want a copy of the instructions? I was reading them here a minute ago. Here they are. Have you seen these?

Mr. Bevan: At one time or another, yes, your Honor, several weeks ago, and I have no objection to them.

The Court: That is, on the sale?

[fol. 136] Mr. Bevan: Yes.

The Court: Yes.

Mr. Reinhardt: These are just on the sale?

The Court: Well, and then the general instructions.

Mr. Reinhardt: Do you have an entrapment instruction?

The Court: What's that?

I have an entrapment instruction. I will give the one that is in Judge Mathes' booklet. Are you familiar with it?

Mr. Reinhardt: No, your Honuor, I'm not.

The Court: It's published in the Federal Rules. Here, I may have a copy that I'll loan you, and you can return.

Mr. Reinhardt: All right. Thank you very much.

Mr. Bevan: I also had thought that Judge Mathes' instructions had an entrapment instruction.

The Court: Yes, they do have an entrapment instruction —56.

Mr. Bevan: The Government will also request that the "aiding and abetting" instruction in the form instructions be granted—given to the jury, your Honor.

The Court: I don't think that is applicable to this defendant.

Mr. Bevan: I guess not. I just was thinking ahead of time of the defense.

The Court: No.

This is 56. You can look at it there.

[fol. 137] Mr. Reinhardt: Thank you.

The Court: This form here; and the general instructions are these, where applicable (indicating).

If you will return those to me, please.

Mr. Reinhardt: Yes, sir.

Mr. Bevan: We intend to offer on one instruction, and that is the definition of the word "facilitate" as used in the indictment, in the statute, unless your Honor has that covered already.

The Court: I don't have that here.

Mr. Bevan: Very well.

The Court: Because these are sales——

Mr. Bevan: Yes, your Honor.

The Court: —and you have either proven sales or nothing, I mean.

Mr. Bevan: That is true.

The Court: So I don't think that "facilitate" is in order in this case.

Mr. Reinhardt: Your Honor, do you have an instruction on the failure of the Government to call a witness who is a former employee or agent, to be used as a presumption?

The Court: No, no. I have instructed as to the witness that is available to either side——

Mr. Reinhardt: Yes.

The Court: —and they do not call him.

[fol. 138] Mr. Reinhardt: Is there an obligation, in your Honor's opinion, on the defense to call a former Government agent as a defense witness?

The Court: I don't think there is any obligation. I

mean, that is up to you. The Government has decided not to call him. They decided, apparently, that they don't need him.

Mr. Reinhardt: Yes. And you would not give an instruction as to there being a presumption that his testimony would be——

The Court: I don't think his testimony is material to the Government's case.

Mr. Reinhardt: Well, to the question of entrapment.

The Court: Well, that is up to you.

The general instruction on failure to call a witness—the idea is that if it is shown that a person can give testimony which is material to the case and is available to a side, and is not called by that side, then the presumption is that he would not have testified in favor of the party who failed to call him.

Now, I can give you that instruction if you want it, but the Government—I do not think that his testimony was material to the Government's case.

Mr. Reinhardt: Well, your Honor, if the defense is entrapment, and——

The Court: You've got to make up your mind whether or [fol. 139] not it is material.

Mr. Reinhardt: There are three people. I think that it is material to that.

The Court: Then you've got to make up your mind whether or not you are going to call him.

Mr. Reinhardt: In view of the fact that he is, as far as I know now, and was then a confidential agent of the Government, it seems to me, once you set up a conflict of testimony between the defense and the Government, there is only one other person there who has the information.

The Court: You've got to make up your mind whether you want to call him or not.

Mr. Reinhardt: If I call him, will he be called as a hostile witness?

The Court: I don't know whether he will be hostile or whether he won't. I can't tell until he testifies.

Mr. Reinhardt: Just to be clear on this, what instruction would your Honor give, would you say?

The Court: Well, I don't intend to give any at the present state of the case. You may want to call him or you may not. The Government may then want me to give the instruc-

tion as to the witnesses that are available to either side; and if one has testimony which you consider material, and you fail to call him, in that event it would be against you.

So you've got to make up your mind whether or not you [fol. 140] are going to call him.

Mr. Reinhardt: All right, your Honor.

I haven't had an opportunity to talk to that witness yet. He was just produced for the first time this morning at 10:00 o'clock.

May we have a recess or something, so I can?

The Court: Have you got some other witnesses?

Mr. Reinhardt: The only other possible witness is the defendant, and I don't know whether he will take the stand or not. I assume he probably will, since—and I'd like to state now for the record the only reason I'll put the defendant on the stand is because the testimony as to previous convictions was admitted over my objection, and that I don't feel that my question as to whether he was engaged at that time in the traffic of drugs called for and supported the answer that there was a conviction 11 years before; and that's the reason that I'm now putting the defendant on the stand.

The Court: That's the question that you've got to make up your mind on. When you put him on the stand, you take the risks.

Mr. Reinhardt: No, but I want to state for the record that the reason I'm putting him on the stand is that the risk is now lessened because the fact of his previous conviction has already been called to the jury's attention, and that I consider that that was done—well, I consider that my ob- [fols. 141-143] jection to that should have been sustained.

The Court: You could make an argument as well as you could by testimony. I'm not arguing with you one way or the other. It's up to you to determine whether or not to call the defendant.

Mr. Reinhardt: But I would not ordinarily have wanted this fact to be called to the jury's attention, and for that reason I would not have put the defendant on the stand, and if I now put him on the stand, it is because that fact has already been called to the jury's attention and their information. I am saying this in the event of an appeal. I don't want to have waived my right to point out this fact by call-

ing him, and having the court say that, in any event, they could have asked him because I called him. I want to make it clear that I'm calling him only because he has already been asked.

The Court: I don't care what you do.

Mr. Reinhardt: I know. I just want to put in my record.

* * * * * * *

[fol. 144] Los Angeles, California, Wednesday, August 6, 1958. 2:25 P.M.

* * * * * * *

Mr. Reinhardt: Your Honor, the defense would like to call as its first witness Mr. Singh.

Mr. Bevan: I think, Mr. Bailiff, he is right outside the courtroom.

The Court: Did you examine the instructions?

Mr. Reinhardt: Yes, I did, your Honor. Would you like me to——

The Court: Will you have any exceptions?

Mr. Reinhardt: Yes, your Honor, one.

The Court: We will discuss it out of the presence of the jury.

Roy Stevens Singh, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 145] Direct examination.

By Mr. Reinhardt:

Q. Mr. Singh, have you had any conversation with me prior to this moment?

A. Yes, I did.

Q. Would you tell the jury the nature of that conversation?

Mr. Beven: Objected to. I see no relevancy to it, whatsoever, your Honor.

The Court: Objection sustained.

Mr. Reinhardt: May we approach the bench, your Honor?
The Court: Yes.

(Thereupon, the following proceedings were had at the bench:)

The Court: Incidentally, the record will show that the defendant is present in approaching the bench and has been on all occasions throughout the trial when counsel approached the bench to discuss matters outside of the hearing of the jury.

Mr. Reinhardt: Your Honor, I would like to make this man a hostile witness, and I would like to show that he refused to discuss the case with me and that, in so doing, he was advised of his rights not to discuss this case with me by the United [fol. 146] States Attorney; that he has been in full conference with the Government and the Government's witness since he has been in the courtroom today, and that his entire actions in connection with this case have been at the behest of the Government.

The Court: I don't think that is material. I mean, I don't know. The way to determine whether or not a witness is a hostile witness is for you to ask him questions.

Mr. Reinhardt: How——

The Court: I don't know what questions you want to ask him. I don't know what is in your mind.

Mr. Reinhardt: I want to show he is unwilling to talk to me, unwilling to supply me with any information so that I could determine whether or not he was a hostile witness. I want to show that he was advised in that by the Government.

The Court: I don't think you can do it in this fashion. You have got to ask him questions, and then, if he refuses to answer them or if he evades them or shows hostility on the witness stand, this is the test, now, when he is on the stand. It isn't when he is out in the hallway or someplace else.

Mr. Reinhardt: As I understand the rule, your Honor, the hostility of a witness is determined by all the circumstances involved in connection with his appearance in the court. That is my understanding, and if your Honor disagrees, that's your Honor's ruling.

The Court: I can't tell by what conversations you had [fol. 147] with him before.

Mr. Reinhardt: That's only part of what I want to show, your Honor. I want to show all the circumstances involved

in connection with his appearance before the court at this time, what his contacts were with the parties, how he behaved toward the parties, how he got here.

The Court: How he behaved what?

Mr. Reinhardt: What his relations were with the various parties prior to this time in connection with his appearance in court, in what manner he was brought into court, and the dealings he has had since he has been in the courtroom. And my understanding is that that is material.

The Court: The question you had, now, is what conversations he had with you before court. I can't determine by that whether he is hostile or whether he isn't.

Mr. Reinhardt: You say that is not relevant to such a determination?

The Court: Not at this stage of the proceeding. It might become, later. He hasn't been asked any questions except that one, and I can't determine the hostility from that.

Mr. Reinhardt: No. I didn't ask your Honor to determine the hostility on the basis of that.

Mr. Bevan: That would be the only relevant purpose.

Mr. Reinhardt: I intend to use that as a part of a chain of evidence.

[fol. 148] The Court: Well, the only difference between a hostile witness and another witness is that you're allowed to cross-examine a hostile witness; that is all.

Mr. Reinhardt: That's right.

The Court: So you start out and ask him some questions, and if it appears that he is hostile, then I can determine from his attitude now on the witness stand his hostility, and if then it becomes material, all the rest of this doesn't go to hostility. All you can do is cross-examine him——

Mr. Reinhardt: Yes, and impeach him, your Honor.

The Court: You can cross-examine him, and all the rules of evidence apply.

So why don't you ask him some questions?

Mr. Reinhardt: All right.

The Court: The objection to the one question is sustained.

Mr. Reinhardt: I feel that my other questions will be objected to when I try to show the man's prior record and what his connection is with the narcotics traffic, which I think I would be entitled to show if he were a hostile witness.

The Court: Well, I don't know. The only mention of this witness so far is that he was present when Lienanan met the

defendant. Now, that's the whole framework of reference up to this moment.

Mr. Reinhardt: That's right, that he initially met the [fol. 149] defendant alone, and then brought him out.

The Court: Why don't you ask him——

Mr. Reinhardt: All right, we can continue.

The Court: —If he knows the defendant, if he knows Licuanan, if he knows so and so. He may not be hostile. I don't know.

(Whereupon, proceedings were resumed in open court as follows:)

By Mr. Reinhardt:

Q. Mr. Singh, did you accompany——

The Court: Do you know the defendant in this case?

The Witness: Yes, I do

By Mr. Reinhardt:

Q. When did you meet the defendant in this case?

A. On April the 24th or 28th, that is, 1958.

Q. Were you accompanied by any other person at that time?

A. By Agent Licuanan.

Q. Pardon me?

A. By Agent Licuanan.

Q. Did you first see the defendant alone?

A. Yes, I did.

Q. Did you have any conversation with the defendant at that time?

A. I showed him a letter of introduction which I had, stating my name and what my business was there.

[fol. 150] The Court: Did he keep the letter?

The Witness: No, he returned the letter to me.

The Court: Do you have it?

The Witness: No, I don't, sir.

I met him in the back of his house, and then we went to the front and sat on the steps, and I told him that we wanted to make a purchase of some heroin, and that Mr. Licuanan was the buyer, he had the money, he was the man, and that I wanted him to talk to him.

So I introduced Mr. Saldana to Agent Licuanan.

The Court: What did you say when you introduced them?
The Witness: Well, I just—I don't remember the name that I gave for Mr. Licuanan, but I went through the motions of introduction by stating that that was the man with the money and he was going to do the buying.

By Mr. Reinhardt:

Q. And you say you don't remember the name that you gave; is that correct?
A. That's correct.

The Court: That he gave to Mr. Licuanan?
Mr. Reinhardt: Yes.
The Court: You did not tell him his name was Licuanan?
The Witness: No, I did not, sir.

By Mr. Reinhardt:

Q. You do remember the name you used?
A. I used?
[fol. 151] Q. Yes.
A. Yes, I do.
Q. What name was that?
A. Roy.
Q. Did you tell the defendant your last name?
A. No, I didn't.
Q. Did you tell the defendant that you—Was the letter of introduction you brought to the defendant from Julio Contreras?

Mr. Bevan: If he knows, your Honor. I think the question assumes that, I suppose.
The Court: Yes.
The Witness: I assumed it was from Julio.

By Mr. Reinhardt:

Q. You didn't read the letter that you brought him?
A. Yes, I did.
Q. Was it signed "Julio Contreras"?
A. Yes, it was.
A. Yes, it was.
Q. Was Julio Contreras in jail——
A. He was.

Q. —if you know?
A. Yes, he was.
Q. Did you tell the defendant that the reason you wanted to get drugs was in order to raise money to get Julio Contreras out of jail?

[fol. 152] Mr. Bevan: Objected to as leading, your Honor.
The Court: Sustained.

By Mr. Reinhardt:

Q. Are you an employee of the United States Government?

Mr. Bevan: Objected to as calling for a conclusion of the witness, and leading.
The Court: Sustained.

By Mr. Reinhardt:

Q. Will you describe for the jury your present relations with the United States Government?

Mr. Bevan: Objected to as too remote, your Honor.
The Court: Sustained.

By Mr. Reinhardt:

Q. Are you presently engaged in narcotic activity on behalf of the United States Government?

Mr. Bevan: Objected to as argumentative, irrelevant and immaterial.
The Court: Objection sustained.
Mr. Reinhardt: Your Honor—
The Court: Did you receive any money for introducting Mr. Licuanan to the defendant?
The Witness: No, sir, I didn't.

By Mr. Reinhardt:

Q. Did you receive any narcotics for introducing the defendant to Mr. Licuanan?
A. No, sir, I didn't.
Q. Do you presently take narcotics, yourself?
A. What is that?
[fol. 153] Q. Do you use narcotic drugs?
A. I have used, yes.

Q. Do you presently use narcotic drugs?
A. Presently, no.

Mr. Reinhardt: May we approach the bench, your Honor?
The Court: Yes.

(Whereupon, the following proceedings were had at the bench:)

The Court: The record will show the defendant is present at the bench.

Mr. Reinhardt: Your Honor, the defendant has requested that I ask the witness—that I ask for a physical showing from the witness of his arm, to determine whether or not he does presently take narcotic drugs.

The Court: I don't know how conclusive that would be.

Mr. Bevan: I think it would be too remote because there is no foundation here to show that a person who is currently using narcotic drugs, you can tell the difference between the scar that is a week old or 10 days old and one that's a year old.

Mr. Reinhardt: Well, if your Honor would like, I can attempt to get an expert witness to—

The Court: I don't want anything. I mean, I'm just the judge. But there is no basis of fact now for any physical examination.

[fol. 154] Mr. Reinhardt: I ask the court to take judicial notice of the fact that the determination can be made of the difference between recently inserted—or recent holes in an arm, and holes that have been there over a year or so, or over a lengthly period of time.

The Court: I think you would have to establish the foundation for that.

Mr. Reinhardt: Before I ask the witness to show his arm?

The Court: Yes, sir.

Mr. Reinhardt: Your Honor, I don't have to take specific exceptions to these rulings; they are all preserved?

The Court: Everything is preserved, yes.

Mr. Reinhardt: Thank you.

The Court: Your question is—what do you want?

Mr. Reinhardt: What I wanted in my motion was to ask the defendant to show his arm so that I can determine——

Mr. Bevan: You mean the witness.

Mr. Reinhardt: Yes—the witness to show his arm, so that I can determine whether he is presently using narcotic drugs.

Mr. Bevan: I think that is perhaps an examination that should not be conducted upon the stand. If counsel wants to see his arm someplace——

The Court: He would have to establish a foundation for it now——

[fol. 155] Mr. Bevan: Yes, your Honor.

The Court: ——have to establish a foundation for it, and none is established.

The motion is denied.

(Whereupon, proceedings were resumed in open court as follows:)

The Court: How long has it been since you—what is the phrase—kicked?

The Witness: Yes.

The Court: Have you kicked? That is, have you stopped?

The Witness: Yes.

The Court: How long ago?

The Witness: Oh, it's been about three or four months now.

The Court: Three or four months.

By Mr. Reinhardt:

Q. Was that prior to the time of May 28th—April 28, 1958?

A. Prior to that?

Mr. Bevan: I'm not so sure the witness knows the meaning of the word "prior."

The Court: Was it before April 28th?

The Witness: Yes, it was.

By Mr. Reinhardt:

Q. When you accompanied Mr. Saldana out to the car, with Agent Lienanan, did you overhear the conversation that then took place?

[fol. 156] A. Well, after I introduced them, I told him that he was the man that was going to buy.

Mr. Licuanan asked him how much it would be for an ounce.

He said it would be about two hundred dollars.

So he said, "Well, I've got about four hundred; maybe we could pick up two ounces?"

So he told us to wait a few minutes outside, and he went in and made a phone call. Then he came back and told us that the purchase could be made later on that same evening, about 8:00 o'clock.

Q. Have you discussed your answers to these questions with the United States Attorney or Mr. Licuanan since you have been in the courtroom today?

A. My answers, sir?

Q. Yes.

A. No, I have not.

Q. Have you discussed the testimony you are giving now?

A. No, sir.

Q. Have you had any conversations——

The Court: Not today?

The Witness: No, sir.

By Mr. Reinhardt:

Q. Have you had any conversation with these gentlemen today?

A. Yes, I have.

Q. Was that related to this case?

[fol. 157] A. Just as far as my rights were concerned.

Q. As far as your rights were concerned? I'm sorry; I didn't hear.

Mr. Bevan: Could the reporter read it back, please.

(The last answer was read.)

By Mr. Reinhardt:

Q. Did they advise you as to your rights?

Mr. Bevan: Objected to as immaterial and irrelevant, your Honor. I don't see how whether this person was advised of rights has too much bearing upon this.

The Court: Overruled.

The Witness: What was the question, sir?

The Court: What did they tell you about their rights—that's what counsel means—about your rights?

The Witness: Well, they asked me—that you might want to talk to me, and that it was up to me to discuss the case with you, if I wanted to or not.

By Mr. Reinhardt:

Q. It was up to you to discuss it with me if you wanted to or not?

The Court: It is up to you to determine—
The Witness: Determine.
The Court: —whether or not you would discuss it?
The Witness: Yes.

By Mr. Reinhardt:

Q. Were you also advised, when I asked you to go out into the hall, that that decision was also up to you? Did [fol. 158] the United States Attorney advise you of that fact also?

A. Yes, he did.

Q. Did you then refuse to go out in the hall and discuss it with me?

A. Yes, I did.

Q. Have you been arrested in the last six months for a narcotic violation?

Mr. Bevan: Objected to, your Honor.
The Court: Objection sustained.

By Mr. Reinhardt:

Q. Have you been promised anything by the Government in connection with your testimony in this case?

A. I have not.

Q. Have you received any compensation from the Government in connection with this case?

A. I haven't.

Mr. Reinhardt: May we approach the bench again now, your Honor?
The Court: Yes.

(Whereupon, the following proceedings were had at the bench:)

The Court: The record will show the defendant is present at the bench.

Mr. Reinhardt: I didn't want to ask in front of the [fol. 159] jury before asking your Honor first whether I'm entitled to ask the defendant——

Mr. Bevan: Witness.

Mr. Reinhardt: Witness—the witness whether he has a record of convictions of narcotic violations.

The Court: The only question which is permissible is whether or not he has ever been convicted of a felony. That goes solely to his credibility. And if the defendant takes the stand, that is all that can go to. I will so instruct the jury, as you know.

Mr. Reinhardt: Yes.

(Whereupon, proceedings were resumed in open court as follows:)

By Mr. Reinhardt:

Q. Have you ever been convicted of any felonies?

A. I have.

Q. Will you tell the jury and the court the nature of the offense for which you were convicted?

A. Possession of heroin and marihuana.

Q. Were those separate offenses or was that just one?

A. Well, just both—

The Court: One offense.

The Witness: One offense.

By Mr. Reinhardt:

Q. That is your only conviction of a felony?

[fol. 160] A. And conspiracy.

The Witness: No, it was a different case, conspiracy.

The Court: Two different cases?

The Witness: Yes.

The Court: All in the same case?

By Mr. Reinhardt:

Q. What was the date of your last conviction? Just the year; the year will be sufficient.

A. January 18, 1954.

Mr. Reinhardt: May I have one moment, your Honor.

The Court: All right.

(Pause.)

By Mr. Reinhardt:

Q. Would you explain the circumstances leading up to your making contact with Mr. Saldana?

Mr. Bevan: I think that's a little irrelevant.
The Court: It's sort of vague and indefinite.
Mr. Reinhardt: Well, all right.

Q. When did you first determine to contact Mr. Saldana?

Mr. Bevan: Objected to. It calls for a conclusion of the witness.
The Court: Overruled.
The Witness: May I have that question again, please?

(Pending question read.)

A. I just can't remember for sure.

By Mr. Reinhardt:

Q. Was it your own idea to contact Mr. Saldana?
[fol. 161] A. (No answer.)

Mr. Reinhardt: I have no further questions, your Honor.
The Court: Cross?
Mr. Bevan: Yes, your Honor.
I would like to have this marked as Government's next exhibit in order, No. 6.

(Exhibit referred to was marked Plaintiff's Exhibit 6 for identification.)

The Clerk: Exhibit No. 6 marked for identification.
Mr. Bevan: A white piece of paper.

(Document shown to defense counsel.)

Cross-examination.

By Mr. Bevan:

Q. I am placing Government's Exhibit No. 6 for identification in front of you, Mr. Singh. Please examine that document.

A. (Witness complies.)

Q. Is that letter, Exhibit No. 6 for identification, the letter which you showed to defendant Saldana on April 28th?

A. It is.

Mr. Bevan: I offer Exhibit No. 6 in evidence, your Honor.

The Court: Admitted.

(Exhibit heretofore marked Plaintiff's Exhibit 6 was received in evidence.)

* * * * * * *

[fol. 162] LEONARD SALDANA, the defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Leonard Saldana.

Direct examination.

By Mr. Reinhardt:

Q. Mr. Saldana, will you tell the jury, as well as you can remember, the circumstances that took place on the afternoon of April 28, 1958, that are involved in this case today?

A. The informer came to me, telling me that he had come [fol. 163] from the County Jail.

The Court: Can you hear that?

They can't hear you back there.

If you will go over to the end of the jury box, there's a little leaner on there that you can lean on, and you can tell whether or not the jury can hear. Do you want to pull it up?

You can lean on that, but not as hard as the other kind, counsel. All right.

Now, what was the question?

(The last question was read by the reporter, as follows:

("Q. Mr. Saldana, will you tell the jury, as well as you can remember, the circumstances that took place

on the afternoon of April 28, 1958, that are involved in this case today?")

The Witness: The informer came to me——

By Mr. Reinhardt:

Q. Excuse me, Mr. Saldana. When you refer to people, will you also mention their names; will you identify the person you are speaking about?

A. Yes. Well, this fellow George came to me and said that he had come from the County Jail——

Q. Excuse me again.

Your Honor, I think this would be unclear.

Q. Would you be able to identify George more, so that the jury will know who George is, in relation to the people [fol. 164] that they know in this case?

A. The informer, that's George, the man that just left the stand.

The Court: The man that has just left the stand?

The Witness: Yes, your Honor.

The Court: Go ahead.

The Witness: He came to me, telling me he had come from the County Jail where my cousin was at, and that he wanted to get out of jail, and that they didn't have no money to get him out on bail, but they did have a little money to buy some stuff with—meaning dope—and that they were going to sell this stuff in return and get some of that money and get him out on bail.

He also told me that he knew I knew Pancho, because Pancho is some dealer, dope salesman; that they knew I knew him, and wanted me to introduce him.

I told him, "I couldn't introduce you to him; it wouldn't do no good."

He said, "Well, how about making a contact with him?"

"I can't make no contact with him. He won't go for it. He'll get me hurt by just going to him and trying to buy dope and taking somebody else with me"—like he wanted me to. "I don't want to do that. I can't do it."

So then he went and talked to this other fellow here. He said—the officer—he said that he was the one that had [fol. 165] the money. Then he asked me if I could get some, and he also mentioned Pancho.

I told him that I didn't want to go to Pancho. I couldn't go to him. Well, to be truthful, I was kind of afraid. I didn't want to do it.

They asked me again.

I said, "Well, I might be able to get some; I don't know." He said, "Why don't you try?"

I said, "I don't know. Wait a minute." I was thinking it over.

And he said, "Well, will you try? Will you try?"

"Yes, I'll try." Finally I told him I would try, and I told him I had to make a phone call first, though.

I went and made the phone call, and I asked this other fellow, did he have some?

He said, "Yes."

I asked him, how much did he want for it?

The Court: This other fellow? Oh, on the phone?

The Witness: Yes.

The Court: All right.

The Witness: He said he wanted $200 an ounce for it.

Then I came back and I told the officer that I could get some for $200 an ounce, and that I wasn't going to make nothing on it, but since they were going to do a favor for my cousin, I was going to get it for him for the same price I was [fol. 166] going to get it.

And he said he had enough for two ounces. He said he had enough for two ounces, so then I told him to come back later that evening. And when they went, I made another phone call and I told the guy to bring me two ounces, that I was going to have the money for him; if I didn't have the money for him that day, I was going to have it for him the next day.

So, when the officers came back and picked up——

By Mr. Reinhardt:

Q. Mr. Saldana, that concludes the testimony as to the first meeting, which was all I was asking you at this time. Now, in the neighborhood in which you live, are you acquainted with a number of people who are engaged in the practice of trafficking in narcotics?

A. Yes, I know quite a few of them. I have known a lot of them from the penitentiary, and they liked me and trusted me and, well they knew I wasn't a stool pigeon or

informer, and they talked pretty freely to me in bars and places. I knew who they were. I could have gone to ten different places.

Q. There were a large number of people——

The Court: What was that last? You could have gone to ten different places?

The Witness: Yes: I knew quite a few of them.

The Court: Ten different places for what?

[fol. 167] The Witness: To make a purchase of narcotics.

By Mr. Reinhardt:

Q. These are all located in your immediate neighborhood?

A. They are.

Q. Although you knew of this, since your previous arrest for the possession of marihuana in 1947 had you had any narcotics in your possession, from 1947 to 1958?

A. No, I didn't have any in my possession.

Q. Had you had any dealings with narcotics between 1947——

A. No, I hadn't had no dealings.

Q. Were you willing, when the informant first came to you, did you freely of your own will agree to make a sale or to arrange for a sale of narcotics?

A. Well, at first I was afraid and didn't want to, but since they came to me and told me they came from Julio, from my cousin, and they were supposed to be his friends—I don't know; then I agreed. But at first I was afraid; I didn't want to do it.

Q. Why did you agree to do it when they told you they knew your cousin?

A. Because they told me they were going to help him, get him out on bail, wanted to do him a favor.

Q. Had you known your cousin for a long period of time?

A. Do I know him for a long period of time?

[fol. 168] Q. Yes.

A. Yes, since childhood.

Q. Is he a close personal friend of yours?

A. Yes, we were close, in a way.

Q. Did you make any profit at all out of this trafficking in narcotics?

A. No, I didn't make nothing on it. I believe the officer knew that.

Q. Do you now have a bank account?

A. No, I haven't.

Q. Do you drive an automobile?

A. No, I haven't got one.

Mr. Reinhardt: I have no futher questions.

The Court: Cross-examine

Cross-examination.

By Mr. Bevan:

Q. Have you ever been convicted of a felony, Mr. Saldana?

A. Yes, I have.

Q. How many?

A. Twice.

Q. When was the first one?

A. 1947.

Q. What was that for?

[fol. 169] A. Possession of marihuana.

Q. When was the second one? Was it in 1954?

A. Yes, 1954; auto theft.

Q. You knew then that there were laws against the—or laws punishing the sale of narcotics?

A. Yes, I did.

Q. You knew this at the time that you were talking to Mr. Licuanan?

A. Yes, I did.

Q. Now, you could have gone to ten different persons in your immediate neighborhood to buy dope, is that right?

A. Yes, I knew; I know quite a few of them people. They've talked pretty freely.

Q. Where do you—where did you live? At 445 South McBride?

A. South McBride, yes, East Los Angeles.

Q. Who did you purchase the narcotics from in this particular instance on April 28th?

A. Albert Palomino.

Q. Where does he live? He lives in Santa Ana, doesn't he?

A. Yes, he recently has just moved out there, but before that he lived on Camillo.

Q. Where is that with respect to your home?

[fol. 170] A. Well, it's East L. A. too, but I don't know how many blocks or miles it is from my home.

Q. Did he move to Santa Ana before or after April 28th?

A. Before.

Q. And you went—Why did you go to him when you could have bought from nine or ten other persons in your immediate neighborhood?

A. Because not too long ago he had told me that if anybody ever asked me, knowing me and trusting me and knowing that I wasn't going to deal with somebody that was wrong—that if anybody asked me, that he had some, and that he would give me a break on it if I ever came to him. And that's why I called him, because I figured it was a sure thing, since he had—recently he had told me he had some.

The Court: Now, you say these nine or ten other numbers of people trusted you and knew that you wouldn't be an undercover agent, let us say?

The Witness: Yes.

The Court: What do you mean when you said that Palomino knew that you wouldn't deal with anybody that was wrong? What do you mean by "wrong"?

The Witness: Well, the guy knew me, and he figured that —well, he figured me for all right; he knew that I wasn't a stool pigeon or an informer, and that——

The Court: And that you wouldn't deal with any officer?

[fol. 171] The Witness: Yes.

The Court: Is that what you mean?

The Witness: I guess so, yes.

By Mr. Bevan:

Q. Do you know what Mr. Palomino meant when he said that he would give you a break?

A. Yes.

Q. What did he mean by that, sir?

A. That he'd give it to me cheap.

Q. Is $200 an ounce cheap?

A. I don't know. He told me he was selling it for two fifty and three hundred, and if he gave it to me for two hundred, well, I could make something on it.

Q. You actually thought, at the time you were dealing with Mr. Singh, the witness who just left the stand, and Agent Licuanan, that they were dope peddlers, did you not?

A. Yes, that's what they told me, they having come from this other guy, Julio, who was in jail for dope at the time. I just figured it was all the same clique, the same people.

The Court: Was Julio in jail for a narcotic violation?

The Witness: Yes, sir. That's what they told me.

By Mr. Bevan:

Q. You felt they were friends, then, of Julio?

A. Yes.

Q. You felt that they would be able to get Julio out on bail?

[fol. 172] A. Yes.

Q. And you wanted that, or didn't mind it, at any rate?

A. Well, just try to help him to get out on bail, since that's what he wanted.

Q. That frame of mind that you had on April 28th, was that the same frame of mind you had on May 7th when you further dealt with Agent Licuanan?

A. Yes; well, they told me that they had—he told me that he didn't have all the money yet and was still working on it, but that he thought it was going to be hard to get him out, but they were still trying.

Q. Who was this, when you say "he"?

A The officer.

Q. Who is sitting here, Agent Licuanan?

A. Yes.

Q. Is that what he told you on May 7th?

A. Yes.

Q. Was anybody else present at this time?

A. No.

Q. And his statements to you were the reasons why you sold narcotics to him?

A. His statements what?

Q. Well, the fact that Mr. Licuanan was still supposedly trying to get Julio out on bail, that was the only reason you sold narcotics to him on May 7th?

[fol. 173] A. That was the only reason, because I wasn't making no profit on it.

Q. Did you tell him that you were making little or no bread on these transactions?

A. I told him that I wasn't making nothing on it. And he told me not to worry; later on he was going to fix me up, he was going to give me a little something.

The Court: Did you use the term "bread"?

The Witness: No. I said I wasn't making nothing on it.

The Court: Did you use the term "piece"?

The Witness: Yes.

By Mr. Bevan:

Q. You knew what the term "piece" meant?

A. Yes.

Q. What does that mean?

A. One ounce of stuff.

Q. Of stuff. What does "stuff" mean?

A. Dope.

Q. By "dope," you mean heroin?

A. Yes.

Q. You are quite familiar with the terms that are employed in the narcotic trade?

A. I was in the penitentiary with a bunch of hoodlums and dope peddlers, and you just learn that as you go. You learn all of it, that and a lot more.

[fol. 174] The Court: Did you see Mr. Singh, the man who was on the witness stand before you, again after April 28th?

The Witness: No, I never did.

The Court: Until he appeared in the courtroom?

The Witness: Yes.

The Court: That's the first time?

The Witness: Yes, your Honor.

By Mr. Bevan:

Q. At the time you first dealt with Agent Licuanan, did you tell him that you had just met——

Mr. Bevan: Excuse me. Withdraw that.

Q. Did you tell him at that time that you had just sold 20 ounces of narcotics the day before?

A. No, I didn't. I thought of bringing that up, too. I didn't tell him nothing about having made no sales before that.

Q. At the time that you told Agent Licuanan you were making no money on these transactions, you were just trying to impress him with the fact that he was getting his dope cheap, weren't you?

A. No, not exactly.

Q. What do you mean, "not exactly"?

A. Well, I was just trying to show him where I wasn't making nothing, just wanted to help my cousin out, that's all.

Q. Is it true, Mr. Saldana, that after Mr. Licuanan had obtained narcotics from you on certain occasions, that you [fol. 175] asked him when he would be back again?

A. Yes, I believe in the conversation, yes, I did ask, or I said, was he going to come back?

Q. Did you ask that on more than one occasion?

A. I remember asking it. I don't remember if it was one or twice or how many times. I do remember asking, was he going to come back, or—yes, I did ask that.

Q. On more than one occasion?

A. I don't think so, no.

Q. Do you remember?

A. I do remember asking, but I don't remember if it was more than once.

Q. Why were you so interested in that?

A. Just to find out if he was going to come back; just conversation.

Q. You didn't mind at all helping Mr. Licuanan and Julio Contreres out, did you?

A. No, just—I wasn't thinking of helping him, really; I was just thinking of helping Julio.

Q. If the same situation occurred again, you wouldn't mind doing that, would you?

A. Huh, I wouldn't—right now, on a deal like that, I wouldn't help my mother.

Q. I can understand.

Did you tell Mr. Licuanan, at the time of your first [fol. 176] meeting with him that, "Why deal with Pancho? I know Pancho's source of supply"?

A. That's something else. That's something else. I didn't say that. I said I didn't want to go to Pancho. I

didn't want to go to him, because he would have gotten me and him hurt, both.

Q. What do you mean by "hurt"?

A. Well, he's known to be a rough character.

Q. Why do you think he would have gotten you and Mr. Lieuanan hurt?

A. Because I have never had no dealings with him; I've never bought nothing from him. And coming up there and trying to buy, with somebody else, just—the people don't do things like that.

Q. You know how they do deal in the narcotics trade?

A. Again I'll tell you I've been in the penitentiary, and you learn all that up there. You don't have to have experience in it; just by going up there, you hear all those things.

Q. Now, on April 28th, when did you obtain the narcotics, the two ounces of narcotics?

A. I made a phone call, and he brought them to me, to my house.

Q. Where you lived?

A. Yes.

[fol. 177] The Court: Who is Pancho?

The Witness: Oh, some other fellow from the East Side.

The Court: What is his last name?

The Witness: I don't rightly know his right name—his last name.

The Court: You don't rightly know his last name?

The Witness: No.

The Court: Do you know him when you see him?

The Witness: Yes.

The Court: Have you seen him in the courtroom since this trial began?

The Witness: No, I haven't.

The Court: Have you seen him since you were arrested?

The Witness: No, I haven't.

By Mr. Bevan:

Q. Do you know his address?

A. No.

The Court: Is Palomino also known as Pancho?

The Witness: No, I don't think so.

By Mr. Bevan:

Q. So far as you knew, they were two different people?

A. Yes.

Q. At the time you were dealing with Agent Licuanan—

Mr. Bevan: Strike that.

Q. On how many occasions did you sell narcotics to Agent Licuanan?

[fol. 178] A. Four times.

Q. First on April 28th; is that right?

A. Yes.

Q. Second on May 7th?

A. Yes.

Q. Third on May 13th?

A. I guess so. The exact dates, I don't remember.

Q. Yes. And the last was on the day you were arrested?

A. That was no sale.

Q. That was no sale.

Now, you knew that you were doing wrong, didn't you, at the time you were selling these heroin exhibits?

A. Yes, I knew there was a lot of wrong involved in it.

Mr. Bevan: No futher questions.

The Court: Redirect?

Mr. Reinhardt: No futher questions.

The Court: Step down. Thank you Mr. Saldana.

(Witness excused)

Mr. Reinhardt: Defendant rests.

The Court: Defendant rests.

Mr. Bevan: No rebuttal, your Honor.

The Court: Government rests?

Mr. Bevan: Excuse me. Just may I confer for just one moment. (Pause)

No rebuttal, your Honor.

[fol. 179] The Court: Government rests?

Mr. Bevan: Government rests.

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Mr. Bevan: Exhibits 1 through 4 and 6 for the Government are in.

The Court: All through 4 were admitted; 5 was marked for identification, and 6 was admitted just now.

On the instructions, you say you have an objection?

Mr. Reinhardt: I have one question and one objection.

The Court: Question?

Mr. Reinhardt: Is it your Honor's intention to give [fol. 180] Instruction No. 39 in Judge Mathes' list of instructions?

The Court: That is covered in this "specific intent" that I have had, that I gave you.

Mr. Reinhardt: That's fine. The only reason I mentioned that was that, at the beginning, it spoke in terms of major crime, and I don't think your instruction speaks in those same terms.

The Court: No. No; this "specific intent" is covered by the instruction which I give on the sale of heroin.

Mr. Reinhardt: The only other objection I have, your Honor——

The Court: And you request the entrapment instruction.

Mr. Reinhardt: Well, I have a proposed entrapment instruction which I have drafted, which I find infinitely preferable. I think that my instruction, your Honor, is more in accordance—I know that instruction was based on the cases up through the Sorrell case, or mainly relying on the Sorrell case, and I think that my proposed instruction is more in accordance with the spirit of this year's Supreme Court decision in the case of Sherman v. United States and, I think it is, Masciale—I'll have to find the spelling for you—Masciale is one.

The Court: Have you got the citation?

Mr. Reinhardt: Yes, I have the cases.

The Court: Let me get the books.

[fol. 181] Is this the Supreme Court Reporter or U. S. Supreme Court——

Mr. Reinhardt: U. S. Supreme Court Reports.

The Court: Does this have the official—Yes. 356 U. S., Masciale v. U. S.

Mr. Reinhardt: The Sherman case is the latest one, your Honor.

The Court: Sherman. That is likewise 356 U. S., Sherman v. U. S.

Mr. Reinhardt: Actually, your Honor, I don't think my instructions are radically different. If you would like, I can show them to you and the U. S. Attorney.

The Court: Oh, yes, sure. Show him a copy of your proposed instruction on entrapment.

I think that this Judge Mathes instruction on entrapment has been approved by the Ninth Circuit; that is my recollection, but I don't recall the case. In any event, I think it states the law clearly and succinctly and briefly.

Mr. Reinhardt: Your Honor, I would object particularly to the distinction between lawful entrapment and unlawful entrapment. In my view, entrapment is a legal defense, and there is no such thing as lawful entrapment. If it is entrapment, it is unlawful. And I think that the instruction that I have drawn would avoid that.

The Court: Of course, in your Sherman case, as in [fol. 182] Sorrell v. U. S., this court firmly recognized the defense of entrapment in the Federal courts. The intervening years have in no way detracted from the principles underlying that decision.

Now, this definition of "entrapment" prepared by Judge Mathes, as you say, is based upon the Sorrell case.

Mr. Reinhardt: Yes. I said, your Honor, that I thought this was more in conformance with the spirit of that opinion, which generally——

The Court: I haven't seen your proposed instruction. If I can see it, I can tell you whether or not I'll accept it.

Mr. Bevan: I haven't finished reading it.

The Court: Oh. Haven't you got an extra copy for him?

Mr. Reinhardt: No. I just had this done at lunchtime, and I had to go back to the office and have my secretary prepare it.

The Court: Well, you finish reading it.

(Documents handed to the court.)

The Court: I think that the same things are covered, in different language and in a different way of saying them, in Judge Mathes' Instruction No. 56.

Mr. Reinhardt: Well, may I offer this for the record?

The Court: This will be defendant's proposed instruction, and it will be refused, and you may have an exception to it.

[fol. 183] Mr. Reinhardt: Thank you.

The Court: And that will be filed as the defendant's proposed instruction.

Mr. Reinhardt: As I remember Judge Mathes' instruction, I don't recall any part that would be applicable to the continuing scheme. I may be wrong on that.

The Court: There is no continuing scheme here, I dismissed the conspiracy count.

Mr. Reinhardt: No, I don't mean that, your Honor, but I mean instruction along the lines that if the jury finds that the three sales subsequent to the first sale resulted from a common scheme or a scheme planted in the defendant's mind by the Government, that then, in that event, if they acquit him on the first, they should then acquit him on the remaining three.

The Court: I don't think that is the law.

I will give the defense of entrapment, and you can argue the defense of entrapment as to each count, because it becomes a question of fact for the jury to decide whether or not the scheme originated in his mind, or he was merely given an opportunity to commit a crime by the Government, or if the Government induced him to commit an offense which he was unwilling to commit. And I think it becomes a matter of argument, and therefore this instruction is applicable and covers it.

There will be an instruction that the jury must find a [fol. 184-185] verdict as to each count.

Mr. Reinhardt: Fine.

The Court: Do you have any other exceptions?

Mr. Reinhardt: No, your Honor.

The Court: None to the general instructions?

Mr. Reinhardt: No.

The Court: Does the Government?

Mr. Bevan: No, your Honor.

* * * * * * *

[fol. 186] (Whereupon, at 3:38 p. m., the jury retired from the courtroom, and the following proceedings were had in the absence of the jury:)

The Court: On this instruction on entrapment, I intend to add the following sentence:

"You will consider the defense of entrapment as to each count separately."

Then it is a matter for your argument if you contend that there was entrapment after an original entrapment.

Mr. Reinhardt: Your Honor, I wonder whether we couldn't have a little bit more than that and tell them that, if they find that there was a common scheme, that these events did constitute a common scheme, and that they all stemmed from this initial conversation, and if they find that to be entrapment, then they would find that they all were. I think, in the Sherman case, that was the situation.

I'll have to look at it. (Pause)

I'll withdraw that last remark. I don't know that that was the situation in the Sherman case. But, nevertheless, [fol. 187] I would still request these certain instructions.

Mr. Bevan: The Government would object to such instruction. I have delayed my remarks until now because I was thinking about it, your Honor, but I do think that such an instruction would be not only unfair to the Government but incorrect.

The Court: Which one?

Mr. Bevan: The one that counsel just proposes, about a taint arising at the first one which attached to all subsequent transactions. If that were true, why, say there was one transaction that the Government might have enticed a person into, any other criminal conduct he would engage in perhaps might be said to have arisen because of that first transaction.

The Court: Well, I am trying to draw one now which I think I will announce to you in a moment.

Mr. Reinhardt: Your Honor, there is one futher point that I would like to ask for an instruction on. That is, that last night, I think right before the jury was withdrawn, the United States Attorney stated that the Government did not want to disclose the name of the confidential informant because to do so might place his life in jeopardy; and, subsequent to that, the Government withdrew that objection, but the jury still heard the remark that the witness' life might be in jeopardy.

[fol. 188] I think that that remark would be prejudicial to the defendant, and I would like the court to instruct the jury to disregard that remark.

Mr. Bevan: No objection to such an instruction by the court, your Honor.

The Court: Counsel, I am still of the opinion that the mere instruction to the jury, that you must consider the defense of entrapment as to each count of the indictment, is sufficient.

Mr. Reinhardt: Very well.

The Court: And I will give the other instruction:

"The jury are instructed to totally disregard any remark by the U. S. Attorney that the life or safety of any person might be put in jeopardy if his name was disclosed."

. . . . . .

[fol. 189] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: Chambers, Barnes and Hamley, Circuit Judges

ORDER OF SUBMISSION—March 2, 1959

Ordered appeal herein argued by Mr. Herbert Bernhard, counsel for the Appellant, and by Mr. Bruce A. Bevan, Jr., Assistant U. S. Attorney, counsel for the Appellee, and submitted to the Court for consideration and decision.

[fol. 190] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: Chambers, Barnes and Hamley, Circuit Judges

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF JUDGMENT—December 7, 1959

Ordered that the typewritten opinion and dissenting opinion of Hamley, Circuit Judge, this day rendered by this Court in above cause be forthwith filed by the Clerk,

and that a judgment be filed and recorded in the minutes of the Court in accordance with the majority opinion rendered.

[fol. 191] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 16,233

LEONARD SALDANA, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the Southern District of California, Central Division

Opinion—December 7, 1959

Before: Chambers, Barnes and Hamley, Circuit Judges

Chambers, Circuit Judge

The judgment of conviction is affirmed. We hold that the second judge of the United States District Court for the Southern District of California was legally justified sua sponte under the circumstances of this case in ordering the plea of guilty on the first and second counts withdrawn (which plea had been entered before another judge of the same court) and directing the entry of a plea of not guilty.[1] [fol. 192] Further, we are convinced that the trial after

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[1] Of the eleven authorized for the whole district, there are eight active district judges in the Southern District of California whose official station in the Central Division is Los Angeleles. Under the local rules, and by rotation, each judge presides over the criminal calendar for a period of three months. In turn, he is succeeded by another. The judge presiding over the criminal calendar normally receives all pleas and imposes the sentences on the guilty pleas. Ordinarily, he tries the short criminal cases. If his calendar does not permit him to hear the longer cases (over four days) he assigns them to other judges.

this change of plea, did not constitute double jeopardy [2] for the defendant.[3]

Here the first judge, presiding over the criminal calendar, on June 16, 1958, received a plea of not guilty from Saldana and his co-defendant, Albert Palomino. Trial was set by judge No. 1 to be held before judge No. 2 on July 15, 1958, a date within the upcoming term of service of judge No. 2 as presiding judge of the criminal calendar.

As the days for service of judge No. 1 on the criminal calendar grew fewer and fewer, Saldana appeared on June 26 before judge No. 1, withdrew his former plea as to counts one and two and entered a plea of guilty. At the suggestion of the district attorney, passing of sentence was postponed until after the trial of Palomino. The record shows quite clearly that the defendant wanted judge No. 1 to handle his case.

After postponements by judge No. 2, Palomino's trial was called for July 29. There was no trial on that date because Palomino had fled the jurisdiction. Shifting his attention to Saldana, judge No. 2 decided that he was not satisfied with the circumstances surrounding the plea of guilty on the first two of the five counts. Therefore, he entered the plea of not guilty for the defendant on counts one and two.

In making a very fine presentation of arguments of double jeopardy and of simple error as to the withdrawal of the pleas on counts one and two, counsel for appellant has overlooked Sinclair v. United States, 279 U.S. 263, and the

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[2] 5th Amendment to the Constitution of the United States: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * *" See, thereon, the early leading case of United States v. Perez, 9 Wheat. 579.

[3] The claim of double jeopardy and a claim that judge No. 2 was not authorized under the statutes or Federal Rules of Criminal Procedure to change a plea by his unilateral act can only be addressed now to count two because there was an acquittal on count one. There was a conviction on counts two, three, four and five. The plea of not guilty on counts three, four and five was never withdrawn, never changed. Saldana did expect the district attorney to dismiss the indictment on counts three, four and five, but it never happened.

legion of cases following it, e.g., our case of Doan v. United States, 202 F.2d 674. Here in Saldana's case, his sentence on count two was concurrent with that of count three. The plea in count three was always "not guilty." And, count three seems amply supported by the evidence.

The fifth count, the subject of a ten year sentence for Saldana, only charged "sale and facilitation of sale." Obviously, under the testimony, Saldana was guilty of the [fol. 193] crimes of possession of and transportation of unstamped narcotics,[4] but he was not charged with those crimes. We are of the opinion that under the evidence (upon which defendant could have had upon request proper instructions as to the elements of sale) it was a question of fact for the jury whether there was a sale as charged in the fifth count.[5]

We have examined all specifications of error and find those not mentioned hereinabove to be without substance.

Counsel's excellent presentation just overlooks the fact that there was never any plea of guilty or motion to dismiss on counts three, four and five. So the court was justified in going ahead on those counts. Had the court been less abrupt in proceeding, but firm nonetheless, defendant surely would have wanted to withdraw the guilty pleas on the first two counts. The court not being willing to dismiss the last three counts, it would appear that what the court did was eminently fair.

Judgment affirmed.

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[4] Saldana was arrested with some five ounces of heroin in hand. Simultaneously, Palomino, also at the scene, was arrested. During the initial excitement of the announced arrest Saldana tossed the bag containing the heroin to the agent Licuanan who had negotiated the purchase. No money, on this occasion, ever changed hands. Appellant says there was no sale. The briefs of the parties ignore this last incident. They meet the issue of sale on the assumption that there was neither consideration nor delivery. The government's position is that earmarking the heroin for delivery constituted a sale.

[5] Our decision herein on the fifth count does not rest on the government's theory that "appropriation or segregation of goods for delivery" completes a sale. While one

[fol. 194] HAMLEY, Circuit Judge, dissenting:

I dissent from that part of the opinion which affirms the conviction on the fifth count. Saldana received a separate and independent sentence of ten years on that conviction.

In count five it is charged that on or about May 21, 1958, Saldana and one Albert Palomino "knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan and Victor Segura of 10 ounces, 339 grains of heroin . . ." contrary to 21 U.S.C.A. §174. Licuanan is a Treasury Department enforcement agent assigned to the Federal Bureau of Narcotics. Segura is a Ventura County, California, deputy sheriff.

Appellant seeks to set aside the conviction on this count on the ground that there was no substantial evidence that he sold or facilitated the sale of the heroin referred to in this count of the indictment.

Accepting as true the evidence submitted by the Government, the following facts appear: Licuanan, using the name Salvador, was introduced to Saldana on April 28, 1958, by a confidential informant. The agent represented that he was interested in buying heroin. Saldana indicated that the price would be two hundred dollars an ounce. Transactions thereafter occurred between the two on that day and on May 7 and 13, 1958. Those are dealt with in counts 1 to 4 of the indictment.

On May 13, 1958, Licuanan told Saldana that the next time he would place an order for approximately five ounces.

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may think it improbable that Saldana, his arrest having been announced, intended to go ahead and complete the transaction. How can one know here as a matter of law what was in Saldana's mind when he threw the package to Agent Licuanan? And, if it is the state of his mind, it should be a jury question. And, as a jury man in appraising his state of mind one might remember that at the moment he parted with the package defendant beyond cavil had the guilty knowledge of having been caught with the possession of the unstamped narcotics and having been seen transporting it. At such a time, he in excitement might complete the transaction. To say as a matter of law what was in the mind of Saldana, the majority herein thinks invades the province of the jury.

Shortly thereafter, Licuanan told Saldana over the telephone that he, Licuanan, had been in contact with a man in San Francisco who wanted to pick up five ounces of heroin. Saldana said, "Well, whenever you're ready, give me a call, and I'll fix it up for you." Licuanan later sent Saldana a telegam from San Francisco stating that he, Licuanan, would be in Los Angeles at 1:00 p. m., on May 21, 1958, to "pick up" the five ounces.

At about 2:55 p. m., Licuanan and Segura arrived in a government automobile at a designated street address in East Los Angeles. The observed Saldana and Palomino in a station wagon, with Palomino in the driver's seat. Licuanan and Saldana got out of their respective cars and [fol. 195] approached each other. Licuanan told Saldana that Segura was Licuanan's uncle, and stated that the "uncle" and the "man in San Francisco" each wanted five ounces of heronin. Saldana said, "That's fine," and spoke briefly with Palomino, who then drove away.

Shortly thereafter Palomino returned in the station wagon and parked behind the government vehicle. Saldana walked over to the station wagon and got in the front seat next to Palomino. Both Licuanan and Segura observed Palomino pick up a brown bag and hand it to Saldana. Licuanan testified: "When I observed this, I believe I asked Saldana, if that was the stuff, and he said 'Yes,' at which time I then ran towards the car and I placed Saldana and Palomino under arrest. Then Saldana threw the paper bag to me and started running."

Another deputy sheriff who witnessed the incident testified that Saldana threw the brown bag at Licuanan after the latter had pulled his gun. The bag fell at Licuanan's feet and was later found to contain ten rubber tubes each containing heroin. Saldana was apprehended by other agents who were on the scene at the time.

The Government evidence, summarized above, indicates that there was at no time any passing of consideration to Saldana for the ten ounces of heroin involved in the May 21, 1958, transaction. Moreover, there was no physical transfer of the property from Saldana to Licuanan until after Saldana's arrest. The transfer which then occurred consisted of the throwing of the paper bag at Licuanan in

the presence of other officers immediately preceding Saldana's attempt to escape.

The Government contends, however, that the sale was completed when Palomino handed the paper bag to Saldana while the two were seated in Palomino's station wagon. The majority states that its decision as to count five does not rest on this theory. It is therefore unnecessary for me to state the reasons why I believe the Government's position in this regard is untenable.

It appears to be the view of the majority that the evidence would warrant a jury finding that when Saldana tossed the paper bag to Licuanan a delivery of narcotics was effected which consummated the sale. The Government [fol. 196] did not advance such a theory in its briefs or oral argument and, as the majority states, the briefs of the parties ignore the bag-tossing incident. It seems to me that, at the very least, appellant ought to be accorded an opportunity to present argument on this question before this court decides the case on this new theory.

I take it from footnote 5 that the majority recognizes that more than a physical transfer of possession had to be shown, for reference is made therein to Saldana's state of mind.

The state of mind necessary to effectuate a delivery pursuant to a contract of sale is a deliberate and voluntary intention to complete the transaction. This being so, I would think it close to a contradiction in terms to suggest, as the majority does, that "at such a time, he in excitement might complete the transaction." A transfer of possession made by accident (as where a farmer's cart full of apples overturns while passing a prospective buyer's establishment) is not a "delivery." Likewise, the prospective seller's transfer of possession to a buyer under great stress and excitement, cause by circumstances necessarily precluding successful completion of the transaction, is not in my opinion a "delivery."

The moment that Saldana was arrested at gun point he knew that Licuanan was not an ordinary customer. He also knew that Licuanan had never intended to make an ordinary purchase of narcotics. Saldana further knew that in any event a sale consisting of a delivery of narcotics and receipt of the purchase price could never be consum-

mated. Since Saldana had this knowledge before he threw the paper bag at Licuanan, the jury could not have reasonably found that this act was intended as a delivery pursuant to a contract of sale.

It was probably but an involuntary reaction under the stress of the moment or an effort to comply with what he construed to be a gunpoint demand for the bag. If he had any other purpose, it must have been to rid himself of the evidence or to distract attention while he attempted to escape. Any of these explanations fit with the established facts, but not the hypothesis that he was completing a sale for which he expected to be paid.

The state of Saldana's mind was a question of fact. The only direct proof of his state of mind is that which he him-[fol. 197] self furnished when he testified that this May 21, 1958, incident was not a sale. The jury, of course, was not required to believe Saldana. But the only other proof available was of a circumstantial nature consisting of what could reasonably be deduced from the surrounding circumstances. The facts as to these circumstances are not in dispute.

Answering the majority's question, one cannot know here as a matter of law what was in Saldana's mind when he threw the package to Agent Licuanan. But the question of whether the circumstantial evidence was sufficient to warrant a jury finding that Saldana intended by such act to complete the sale is a question of law. I find not a single circumstance surrounding the event which would tend to show that Saldana had a deliberate and voluntary intention of consummating the sale. In my view all of the facts reviewed above concerning the bag-tossing incident indicate that he could not have had such an intention. Considering the fact that the Government must prove each element of its case beyond a reasonable doubt, I am of the opinion that the conviction on the fifth count should be reversed.

[fol. 198] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 16,233

LEONARD SALDANA, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT—December 7, 1959

Appeal from the United States District Court for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

[fol. 199] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER DENYING PETITION FOR REHEARING—February 18, 1960

On consideration thereof, and by direction of the Court, It is Ordered that the petition of Appellant, filed January 28, 1959, and within time allowed therefor by rule of Court, and valid extension thereof, for a rehearing of the above cause be, and hereby is denied.

[fol. 200] Clerk's Certificate to foregoing Transcript Omitted in Printing.

[fol. 201] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner, It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 18, 1960.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of March, 1960.

[fol. 202] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR CERTIORARI—June 27, 1960

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to poceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 1036.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 27, 1960.

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189 IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Peirson M. Hall, Judge Presiding

No. 26878 Crim.

UNITED STATES OF AMERICA, PLAINTIFF

v.

LEONARD SALDANA, DEFENDANT

REPORTER'S TRANSCRIPT OF PROCEEDINGS—August 7, 1958

Los Angeles, California

APPEARANCES:

For the Plaintiff: Laughlin E. Waters, United States Attorney; by Bruce A. Bevan, Assistant United States Attorney.

For the Defendant: Stephen Reinhardt.

190 The COURT. Call the calendar.

The CLERK. No. 26878-Criminal, U.S.A. versus Leonard Saldana.

(The following proceedings were had outside the presence and hearing of the jury:)

Mr. REINHARDT. Your Honor, before you bring the jury back, may I make a motion?

The COURT. Yes.

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. REINHARDT. Your Honor, the defense would like to move for a directed verdict at the conclusion of the trial.

The COURT. The language of the statute is to move a judgment of acquittal on the ground of insufficiency of the evidence. Your motion is as to the remaining four counts?

Mr. REINHARDT. That is correct, your Honor, particularly as to Count V, where the evidence does not show there was a sale.

The COURT. Motion denied.

(The following proceedings were had within the presence of the jury:)

The COURT. United States versus Leonard Saldana. The record will show the defendant is present in person and by counsel, and the jury is present in each of his or her place. This is the time for argument.

191 Mr. Bevan?

Argument by Mr. BEVAN:

Mr. BEVAN. May it please the court, counsel, ladies and gentlemen of the jury, in my opening statement I told you that the Government expected to prove the facts contained in the indictment. I think by now you recognize the Government has so proved those facts—

The COURT. Excuse me, Mr. Bevan. I should instruct the jury that the case now pends as to Counts II, III, IV and V; and Count I, the conspiracy count, has been disposed of and will not be submitted to you.

Mr. BEVAN (continuing).—so, with the exception of Count I, the Government has proved to you, I believe, through testimony of its own witnesses and through admissions of the defendant, that the facts contained in Counts II, III, IV and V are true. The defendant has testified in effect, and I believe will raise the issue of entrapment upon his argument to you. I believe it proper for me to await that argument as to entrapment, and will do so, inasmuch as we have proved already those facts which are alleged in the indictment.

The COURT. Mr. Reinhardt:

Argument by Mr. REINHARDT:

Mr. REINHARDT. Thank you, your Honor. May it please the court, ladies and gentlemen of the jury: As the Government has told you, there is only one real issue left in this case. The defendant took the stand and frankly

192 admitted that the sales that were charged were made.

The only defense in this case, and the reason you will find, I hope, that the defendant is not guilty of the accusa-

tions, is that the defendant was entrapped into making these sales by the actions of Government agents.

Now, the court will give you instructions in the law of entrapment; when the court does so, I would like you to try to keep in mind the reasons that entrapment is a defense in a case of this kind. Entrapment may be a new concept to the members of the jury, it may seem strange that when a defendant has made sales of narcotics he is still not guilty under the law. But there is a reason for this. The reason that entrapment is a defense is that under the laws of the land we cannot permit Government agents to induce persons to commit crimes and then send them to jail for committing the very acts that are induced.

Now, Government agents serve a useful function; in order to trap criminals it is necessary that they secure evidence if someone is engaged in a course of criminal activity, there is nothing wrong with letting Government agents approach him and ask him if he will do what he has already been doing; this is just a way of securing evidence. On the other hand, we need protection for people who are not committing crimes, people whom the Government approaches and asks to commit a crime and causes to commit a crime. What type
193 of people does the entrapment doctrine strive to protect? Well, people who are well off, people who have swimming pools and Cadillacs don't need this protection. The Government is not likely to go to citizens successful in life and ask them to engage in narcotic traffic; those aren't the people the Government approaches, those aren't the people who need the protection. Those aren't the people the entrapment doctrine has been announced in order to protect. The people the entrapment doctrine protects are the economically underprivileged, the people who have social problems, the people who violated the law previously, the people who live in areas where crime flourishes, the people most likely to accede to pressure from the Government when asked to go out and enter into such an activity.

The issue is very simple; the defense hasn't asked many questions, the defense didn't examine each of the Government's witnesses because we never denied the defendant did make these sales. The only fact the defense attempted to

bring out in this case is what were the circumstances surrounding the first contact between the Government agent and the defendant; what was the defendant doing when the Government came to him; why did the Government come to him; what reasons did the Government give for asking the defendant to engage in the traffic of narcotics?

Now, the first question which I am sure will come to
194 your mind was: Was the defendant actually engaged in the traffic of narcotics at the time the two Government agents came to him? I should say rather than two Government agents, one agent of the Narcotic Bureau and one person who has been called a confidential informant, or secret informant. Do we have here a man who was then engaged in drug traffic, a man engaged in the course of criminal conduct, or do we have a man persuaded by the appeals of the Government to go out and become involved in this traffic? I think you will conclude the admissions of the Government agents show most of the elements are clearly entrapment.

Agent Jayme Licuanan is the first Government witness to testify; I think you will remember him; he is the man who sat next to counsel for the Government throughout this trial. Agent Licuanan testified when I asked him, that he approached the defendant with a letter from Julio Contreras who, evidence shows, to be a close friend and cousin of the defendant. Agent Licuanan brought this letter, and the defendant was informed his cousin was in jail, that bail had to be raised in order to get his cousin out of jail. The Government agents posed as dope addicts, not innocent people who might be harmed by the purchase of drugs, but people actively engaged in narcotics traffic and who could get drugs from any one of a number of people. These agents told the de-
195 fendant in order to get his cousin out of jail, in order that he be put back at liberty, they would have to raise some funds somehow, they had to sell dope, and they had to raise some money; and defendant told you he knew, and I am sure the Government knew, that it would be possible to get dope in this area from a number of people. Perhaps the defendant should have refused; I am sure you all think he should, but that is really not the issue in this case, whether

he should have refused. The defendant has already told you he regrets he didn't refuse, and I am sure you understand why he regrets he didn't refuse. But, the defendant was a man who lived in East Los Angeles, lived in an area where there were many people engaged in this traffic. He has told you he had been in prison before, he had been there for possession of marijuana. The possession of marijuana is a very less serious offense than traffic in heroin. He was not there first because he sold marijuana, he was there because he had it in his possession. When he was in jail he met numbers of people involved in the narcotics traffic. He knew the people, he knew the terms, it was easy for him to make a phone call and arrange for the sale of narcotics in order to help his cousin?

And what did the Government do when they approached this man? They came to a man who only had to lift the telephone to become a criminal in the eyes of the Government. They came to a man who lived in an area where the code is
196 not what it might be, where friends and relatives, perhaps, are engaged in this, but where the defendant had not previously been engaged, they took a man who can easily be pushed over into an area of criminal conduct, they appealed to his sympathy, his loyalty, they appealed to the best emotions defendant had, they appealed to the code of the people who live in that area, the code that you should help your cousins, your relatives, your friends. All he had to do was lift the telephone.

Without great thought, and without great intelligence, the defendant acceded to the request of the Government.

Now, what was the defendant's role in this? At no time has it been shown that the defendant had dope available in his house when the Government requested it. What the defendant would do is call a supplier; there were lots of suppliers in the area. The defendant would call one and have dope sent over. He was a go-between and an agent who was a go-between at the request of the Government. There was no extensive planning required in this case, there were no difficult arrangements to make, a number of people who lived in the area could have done the same thing the defendant did. For-

tunately, not all would have, but some of them would have if the Government had come to them and made an appeal of this nature.

Everyone has agreed, on the witnesses' testimony, who
197 supplied the dope. The dope was supplied by a man named Albert Palomino, but we are not here to judge Albert Palomino, he is not on trial before this jury. But defendant Saldana did, and all Saldana did was to make a telephone call on several occasions when the Government asked him to get dope in order to raise money for his cousin, in order to help his lifelong friend.

The clear question the jury will have to decide is what the defendant's course of activity was prior to the time the agent approached him.

As the Government told you, he was convicted of possessing marijuana in 1947, eleven years ago. I don't know how many people in the area in which the defendant lives have had possession of marijuana at some time. In any event, that was eleven years ago. Also, as the Government has brought out, the defendant was once convicted of taking an automobile unlawfully. As the court will instruct you, this is not to be considered as any evidence that he committed the present crime.

Now, what testimony is there concerning the defendant's activity prior to the time he was approached and persuaded by the Government agents to launch into a course of criminal conduct? What is the Government's testimony in this regard? You will remember Agent Licuanan first testified he approached
the defendant Saldana in order to obtain an introduction
198 to one Pancho. The defendant told the Government agent he couldn't take anyone to Pancho, he didn't know Pancho well enough, it would be difficult to take someone to Pancho, he hadn't had any dealings with Pancho. This was the end of Pancho's connection with this case. But if the agent knew or thought that the defendant was involved in the drug traffic why did he go to him and ask merely to be introduced to Pancho? If the Government had thought or had any idea that the defendant Saldana was engaged in the traffic of drugs,

wouldn't he have gone to him and attempted to buy drugs from him? Yes, the Government's agents specifically deny they went to Saldana with an idea of asking him to get them drugs. The Government agent says it was just voluntary, we didn't even want him to sell us drugs but he was eager to sell us drugs.

There is a basic inconsistency in the Government's position. They try to establish on one hand they knew defendant was engaged in drug traffic and in the next breath they tell us they were surprised that the defendant offered to supply them with drugs, they had no intention of obtaining drugs from him. Why did the Government's witness testify in this contradictory manner? Well, the first story you were told by Agent Licuanan was the one I have just related. First he said they went to the defendant just in order to meet Pancho.

199 At that point in my cross examination of the agent it became apparent that the defense was attempting to prove, and had made a good case of entrapment. Then I asked the agent, in order to clinch the case, to show that the Government had no reason to approach Saldana and had no idea he was engaged in drug traffic, because he wasn't engaged in drug traffic, I asked him if he had any idea or evidence the defendant was engaged in drug traffic. Well, the agent hesitated, and finally remembered dimly, yes, he had a conversation somewhere, somebody told him the defendant was engaged in drug traffic. Who and where? Well, at first he didn't remember. This was the first time the agent had any difficulty remembering anything, as a matter of fact, his memory got better as the trial went on, he remembered far more on the second day than on the first. He remembered far more after my cross examination than he had when he first testified. You remember, the first day of his testimony he remembered several conversations word for word, he had no trouble remembering, but it was only on the second day after the entrapment defense became an issue, he suddenly remembered on the first day he had met Saldana, Saldana had said to him: Oh, I sold a huge amount of heroin, I sold 20 ounces the day before.

That is a fairly significant point in this case. If it is true he sold 20 ounces the day before, of course, there is no
200 entrapment. That is the point the Government would have made on the first day if it had been true, but that is a point only brought out after we went into the entrapment defense. The agent suddenly remembered it all clearly, what Saldana had told him and had done. That is a trained witness; he has been in the business for years, his memory was excellent, the first day; the time the witness' memory began to fail was when I asked him: What information did you have that Saldana engaged in narcotics traffic? At that point his whole line of attack shifted; he suddenly abandoned the idea he had gone to a man he had no information about with a letter, his going to Saldana with a letter, that line was abandoned. Suddenly, he had gone to Saldana, there was a major dope peddler named Leonard who lived around that neighborhood. That was a good story. After he had hesitated for a while he came forth with it. To return to that conversation in more detail, I asked him where he heard this. He didn't know, for a moment, where. I asked him where he heard this. He didn't know from whom or where. I asked him the question several times, then he remembered. Yes, he had heard it over coffee somewhere; from whom? Oh, a deputy sheriff. Did he know who the deputy sheriff is? No, maybe two or three deputy sheriffs. No, he didn't remember. Then I said: Do you mean to tell me you knew this man was a big dope peddler, you had that information and didn't remember
201 who told you? Yes, he did remember now, he knew it was Deputy Sheriff Peterson, sitting right there, the man he was looking at while he testified, the first man who came to his attention. Then he remembered the man, that is who it was.

Agent Licuanan made the best case he could after I shifted the line of attack, he found someone who might be willing to confirm his story; the man was right there and heard him give the story.

I just don't understand why it is possible for the witness to testify that he went to Leonard Saldana merely in order to get an introduction to Pancho, and then in the next breath

to say that Leonard—he said he had information that Leonard was a big dope peddler. Well, he remembered a lot more at that time. He also remembered Leonard had a conviction for a narcotic deal. How many? First he thought it was two or three, finally it turned out to be eleven years ago, conviction for possession of marijuana. He said he knew about these convictions when he went out to Leonard. Of course, as you know, he had every opportunity to learn about that conviction prior to the time of his testimony. This was, again, something he dragged out in a last attempt to show that the Government had some reason to entrap this defendant.

I submit to you that Agent Licuanan's testimony from the time I asked him what information he had as to Saldana's activities is pure fabrication. The agent had made a case, he got all the way to the trial, he was halfway through his testimony, he discovered the defense, he realized that the Government was wrong in going to the defendant, preying on his sympathies, picking out an easy mark and then shoving him over into the area of criminal activities, that the Government shouldn't go around to people like Saldana who had trouble before and try to make criminals of them. The duty of the Government is to try to assist these people, to try to help them go straight, and not to try to convict people because they have had trouble before.

202

Other than Licuanan's statement as to the statement made by Peterson, there is no evidence that Saldana was engaged in criminal activities selling dope when the agent approached him. If he was engaged in selling drugs to other people, the Government had the opportunity to discover that, they could have placed the defendant under surveillance. Whether they did that, I don't now, and you will never know. But if they did, they didn't know he was selling drugs to anyone else, they had no information he was selling drugs before April 28th, because the only evidence in this case is that this defendant sold drugs to a Government agent to help his cousin after the Government agent told him that was how to get his cousin out of jail.

Regardless of whether it was right for him to sell
203 those drugs, and he wasn't, he is not guilty under the law if you conclude that he did sell because he was persuaded to do so by the activities of the Government agent.

Do we have any other evidence of this alleged conversation with Peterson? Well, the Government called Sheriff Peterson to the stand. They said to Sheriff Peterson: Did you have any conversation with Agent Licuanan on April 28th? Peterson, who had been sitting there when Licuanan said there was such a conversation said yes, I had a conversation. Well, we don't know what that conversation was, we don't know from Peterson that he ever did tell Licuanan anything about Saldana. I didn't ask him. He had heard Licuanan's story, he had seen it made up on the witness stand. I didn't want Peterson to confirm it when he had sat there and heard it; but Peterson never said he had told Licuanan that the defendant was engaged in narcotics, or that there was any Leonard who was a big narcotics peddler, or that anyone living in or around this area was a big narcotics peddler, and this is the Government's main point. They have to show that the defendant was ready and willing to engage in this traffic; they have to show some evidence that he was not persuaded by the Government to do something he would not otherwise have done. The only way they can do that is to show he was doing something before.

The only evidence as to that is that fabrication, or the
204 story that was told by Agent Licuanan after he was pressed to the wall. That is not even confirmed by Peterson, although he is the one alleged to have told it to him.

It is true there is one other witness in this case, Roy Singh, a confidential or secret agent. Roy Singh says he was a narcotics addict, that he cured the habit a couple of months ago, he didn't remember when, but he was sure it was prior to the time when he approached Saldana in company with the Government agent. Now, Mr. Singh stated he had previously been convicted of a narcotics violation, and that he continued to use narcotics. Suddenly we find him in the company of the Government; he worked for the Government, he acted as their agent. But I have to call him as a witness for the defense. Why did I call him? He was the only other person to the

conversation at the time the entrapment took place. Now, of the three witnesses, Agent Licuanafi, the defendant and Roy Singh, the Government did not produce Roy Singh. I had not much expectation when I called him that he would be willing to testify for us. As he told you, he has been taking drugs, as he told you, he had convicted for violating the law, and is now acting for the Government. He hasn't been prosecuted for that violation. It would be unreasonable for me to expect Roy Singh to tell the truth, to substantiate the defendant's story as to what really happened when the
205 Government entraps them, because if Roy Singh told what happened he would not be in very good shape right now. I think you can readily understand why Roy Singh refused to substantiate the facts in this case, but we presented him so you could see the testimony of the three people who were there when this entrapment took place.

There is one further point I would like to make at this time. There were four counts and you will consider four sales of narcotics, and all these sales took place after the Government entrapped the defendant. The only real issue is whether the defendant was originally set on this course of conduct by the activity of the Government. If he was so set on this course of conduct, and if they came back to him under the same relationship, then I think you would be justified in finding, and you should find, that this is one continuous entrapment. This is not a case where the Government comes to a man and traps him into committing an offense, then he goes out and murders somebody, or sells drugs to people and in general becomes a professional narcotics peddler. This is a case where the defendant on four occasions sold to the same man, the same Government agent who had persuaded him that he should make these sales in order to help his cousin. The same defense of entrapment applies to all four counts. If you find he was entrapped on the first count, then, logically, it fol-
206 lows he did these acts for the same reason the next three times, these were the same parties, the same circumstances.

Now, there is really just one issue in this case, either we have here a man who is engaged in narcotics traffic and

the Government knew it and they went out and they provided the opportunity for him to make additional sales, and they did this, if they did it, quite justifiably in order to get evidence against him of engaging in narcotics traffic, if that is your belief, then it is clear the Government's case is established and defendant is guilty. But if you have any reasonable doubt as to this, if you have any doubt as to whether the defendant was innocent or not at the time the Government approached him, if you have a reasonable doubt in light of the story of the Government's witness, in light of his first story that he originally went to him just in order to get an introduction, and then his subsequent change to the fact he knew Leonard was a big dope peddler, if that raises any doubt in your mind as to what defendant's course of conduct was when the Government approached him, if you have that reasonable doubt, then under the law the judge will instruct you to return a verdict of not guilty on the basis of the defense of entrapment. If you have any reasonable doubt as to whether defendant was entrapped in that incident you must return a verdict of not guilty.

207 Now, the defendant took the stand voluntarily, he told you a fairly honest story, it seemed to me he couldn't have been more honest with you; he told you his background, he didn't try to hide conditions under which he exists, his friends and associates; he told you how familiar he was with the narcotics traffic; he didn't paint a rosy picture of himself. He told you he made friends among convicts when he was in prison. I think, understandably, the defendant didn't have available to him the right range of friends or people from whom to select friends. It is understandable, living in the area where the defendant lives, having been brought up under social and economic conditions such as the defendant was brought up under, it is natural, living in this area, knowing these people, he would be familiar with narcotics traffic. He told you all this and he told you that is what made him an easy prey for the Government agent who wanted to get a conviction. I think you must conclude the defendant told you the truth when he took the stand, that he told you why he did this, that he told you he acceded to

the Government's request, that he told you it was easy for him to get the drug people to trust him, that he told you he had a code different from yours and mine, he had a code that wouldn't rat on his friends, wouldn't act as a Government agent and turn over people he was associated with, wouldn't insinuate himself into the lives of people and pre-
208 tend to be a personal friend, then turn them over to the Government.

Whether that is right or wrong, that is his code, part of his code, to help his friends, to help his relatives, to help people who haven't been brought up under the same circumstances as you have, people who have been brought up in this area and were involved in narcotics traffic. Well, you help them in some ways and it is right, and you help them in other ways and it is wrong. You certainly help them by raising bail for them by legal means, or you help them by raising bail through selling drugs. Defendant knew it was wrong but he did it because the Government came to him, and persuaded him, and that is the only point in this case, the reason the defendant did these acts.

I hope you will bear all this in mind when the court gives you instructions on entrapment. This is the defense. The question is: What was the defendant's state of mind? Do you believe all the evidence of Agent Licuanan? Do you believe he really told the truth when he told you that story about the unidentified people over a cup of coffee, when he couldn't remember who they were, when "they" finally were reduced to just one person, and when that person finally turned out to be a gentleman who works for the Government sitting in the front row of this court. When you consider all of the evidence I hope you will conclude that
209 at the very least there is a reasonable doubt in your mind, that the defendant was entrapped under the evidence as you have heard it. You would be justified in concluding that there is no doubt that the defendant was entrapped, but that is not necessary. All you need is a reasonable doubt.

The evidence is before you. I am sure you will give it your fair consideration and return a verdict of not guilty to all counts. Thank you.

The Court. Mr. Bevan.

Mr. Bevan. May it please the court, counsel, ladies and gentlemen of the jury: I think it is a fair statement to say that the major point of the defense here is that the Agent Licuanan was inconsistent when he told you he went to Mr. Saldana for the purpose of obtaining an introduction to Mr. Pancho. And, on the other hand, when he said to you in cross examination that he had had information from someone later identified to be a deputy sheriff, that a man named Leonard was a major dope peddler in the East Los Angeles area, and he had had prior convictions for narcotics dealings, it is contended that is inconsistent. I would agree to that. It is further contended that the inconsistency is by reason of the fact that the agent added to his testimony, let us say, likewise, when he said he had had information that there was a major dope peddler in East Los Angeles by the name of Leonard, whom he thought
210 Saldana was. I don't know what was in the mind of the agent. Let us assume that he lied to you; let us assume that he puffed his case when he thought the defense of entrapment was coming forth to you. Look at the evidence, then, that remains, and ask yourself what difference does that puff make? What remains? So the Government did not have evidence before they went to Saldana that he was a member of a dope gang. Then what facts remain? I think those facts are, then, almost uncontested, they are agreed to by the defense and by the Government, Mr. Licuanan has stated, and I think the Government records will bear him out, or they would have objected to their introduction as inconsistent with the testimony in this trial, that he went to Mr. Saldana, had given him Government's Exhibit 5; it says:

> Ese Renard,
>
> this is Julio your Primo. I'm here in the county and I'm sending you my Brother in law Roy he is already going out, and he is going to help me with some bread so I can make it, he'll explain. tu Primo
>
> Julio
>
> Primo if you dont believe Roy, send someone to see me on visiting hours.

Licuanan testified, and the defendant also testified that Licuanan asked him for an introduction to a man by the
211 name of Pancho so that Licuanan could make some purchases of narcotics from him. This Mr. Saldana admits. Mr. Licuanan testified also that Mr. Saldana said: I don't want to introduce you to Mr. Pancho; or: I cannot introduce you. This, also, Saldana admits.

I would like you to examine the inconsistency not only with the Government's position, we have done that, but that of the defense. The defense has stated the Government has come here—went to Mr. Saldana to corruptly change his mind from that of an innocent person, to make him commit one of the most heinous crimes that can be committed, selling narcotics. On the other hand, they admit the agent went there merely for the purpose of obtaining an introduction to another known dope peddler. Don't you think there is a little bit of inconsistency of the defense in that regard, if the only reason the agent had for going there is to obtain an introduction from Mr. Saldana to another dope peddler? Can it be said fairly, then, the whole Government purpose in going to Mr. Saldana was to corruptly make him a dope peddler? That doesn't make sense, since Mr. Saldana and Licuanan and he agreed he asked him to make an introduction to Pancho to help him buy narcotics. I think you will agree the purpose in going was not to obtain narcotics from Mr. Saldana. That makes sense and is consistent. I think that, then, is established; and
212 then we come to what happened after Mr. Saldana stated he was unable or unwilling to make an introduction to Pancho. Now, Licuanan testified, as to the testimony of Saldana, saying that Saldana said: Why go to Pancho, I know Pancho's source of supply is Kitty. When I asked Mr. Saldana why he refused to make an introduction to Mr. Pancho of the agent, he said, and I think it is a rather unsatisfactory answer, he said that, "Well, I was afraid. He is a pretty tough boy, Pancho, and I was afraid we could get hurt." Hurt in what respect? If Pancho is in the business of selling narcotics, he will go through with a sale, he is not going to hurt somebody, because sales must be made to make

money. He will hurt him only if Mr. Saldana is there to be a squealer or a rat; he will hurt those two people in that instance. But, as everyone knows, Mr. Saldana, according to his code, would not be a squealer; his entire community knows that, and he himself testified to that, so that could not be the reason Mr. Pancho would hurt him. There is no other reason advanced why Mr. Pancho would hurt him, so why, indeed, did Mr. Saldana refuse to make that introduction?

I think you can find fairly from this evidence that he refused to make an introduction because he didn't want Licuanan dealing with Pancho, he wanted Licuanan dealing with himself. I think it is further borne out. Suppose he was unable to make the introduction to Pancho, absolutely unable to do so. He knew ten people in the immediate area to whom he could have made an introduction, from whom Licuanan could have bought narcotics; but did he do so? No, too easy. He goes to Santa Ana and has Mr. Palomino, a dope peddler, arrange this. If Mr. Saldana was not in the narcotics business, didn't want to have anything to do with narcotics, what would he do when a person came to him and wanted to buy narcotics? If he wanted to help this fellow Julio out for any reason, and yet stay away from the criminal aspects of selling narcotics, he would do one thing: Arrange an introduction to a person in that immediate neighborhood, perhaps next door, and get out of it and stay away from him. But what did he do instead of that very simple thing that could have occurred in his immediate neighborhood? He arranged to be a middleman for a dope dealer in Santa Ana, and why? Because he says the dope dealer in Santa Ana had promised to give him a break.

213

There was another comment upon Mr. Licuanan's statement in cross examination on the second day, that Licuanan stated the first time he met Saldana, Saldana says: "Why go to Pancho, I know a source of supply. I sold 20 ounces just the day before." The statement of Licuanan that Saldana said he had sold 20 ounces the day before is attacked as a fabrication, something the agent made up on the second day;

you have noted the agent's reports were given to the
214 defense and you have seen that certain items, such as the one that Leonard was a major dope peddler was not included in those reports. That was brought out by very learned counsel——

Mr. REINHARDT. Your Honor, I am going to object, there was nothing brought out on the basis of those reports.

The COURT. You asked him whether or not he had information before he went out there that Leonard was a peddler, if it was in his reports. That is what he is commenting on.

Mr. BEVAN. May I proceed, your Honor?

The COURT. Proceed.

Mr. BEVAN. Thank you, your Honor?

That comment was brought out by counsel when he did not find it in the report, but you will note he never made any comment on cross examination that the statement "I sold 20 ounces the day before" was not in those reports, that was not brought out, and I think it fair for you to infer from that that that statement was in the reports, and, therefore, since that statement was in the reports a long, long time before this defense of entrapment arose, I think it fair to infer that statement did take place. If that statement did take place obviously the Government is not corruptly having this man become a narcotics peddler, when he sold 20 ounces of dope the day before.

I think even the defense agrees if Mr. Saldana actually sold
narcotics previous to the Government's contacting him,
215 then there is no entrapment and he is stuck with his admission of the facts in this case. Now, we do have that inconsistency; Mr. Saldana denied he made a statement he sold 20 ounces of narcotics the day before. We need not believe that, you need not believe that; one reason is because he has two prior felony convictions; another is because of the circumstances. He has a lot to gain and a lot to lose in this case. Another thing, strictly aside from fabrication of testimony is on memory. He obviously didn't take notes of these things; the agent did. I think you can find from one little circumstance in the case that Saldana's memory is not too good, is not beautifully accurate, at any rate, because you

will remember even after Mr. Singh took the stand and testified he used the name Roy when introduced, nevertheless, Mr. Saldana took the stand and said: I just met that man who left the stand, his name was George. It wasn't Roy. But in Exhibit 5, it states: "I'm sending you my brother in law Roy * * * if you don't believe Roy * * *" So, obviously, the man was introduced as Roy, and at least Mr. Saldana's testimony he was introduced to him as George is shaky, his memory is at least a little gone in that respect.

Aside from the agent, I think you can find from less evidence, ladies and gentlemen of the jury, that the defendants own story is incredible, just by looking at it on its own hook. His own statements, I think, will show he was engaged
216 in sales of narcotics before. Let us take a look. The most important thing I think is the fact that these are four sales, this is not a single, isolated instance of one person who was a man who comes to him and pleads with him, begs with him to obtain narcotics. I can see a situation where, perhaps, entrapment might occur on one such occasion. I can even stretch my imagination to believe a man could be corruptly influenced to sell narcotics against his own, innocent will on two occasions, but on the third and fourth, particularly, with the fourth, which involves a sale of 10 or 11 ounces of heroin, 437 grains being in an ounce, and a grain or so being the normal equivalent, I should think, of addicts' use, that is an awful lot; it is more than 400 different shots to addicts right there. I should think that four sales alone are more than enough to throw a shadow of doubt across the defendant's story. But then we have, also, his association with peddlers, his cousin Julio in jail, Pancho he admits to be a known narcotics peddler, Palomino he obviously knew to be a narcotics peddler, Licuanan and Mr. Singh came up and introduced themselves as narcotic peddlers. And consider, also, this: The ease with which he bought narcotics from Mr. Palomino, who trusts him with a very valuable thing, 10 ounces of narcotics, and trusts him to get the money back on those other occasions.

Do you think it is likely for a person being engaged in
217 such a dangerous business as narcotics to trust for the first time Mr. Saldana, who is never known to sell nar-

cotics before, to come to you and say: "I want to buy 10 ounces of the stuff"? Would that person say, "All right Leonard, you are a good guy, I know you to be no informer." If Leonard Saldana is known in his neighborhood not to be a dope peddler, then when he does go to someone to buy dope it looks suspicious to the dope peddler. But it did not look suspicious to Palomino, he just took it for granted. You think about that. So unless Mr. Leonard Saldana was in the dope business previously, Palomino's suspicions would have been aroused by the fact he was coming to him for the first time.

Again, Saldana, instead of merely introducing Mr. Singh and Mr. Lieuanan to somebody else in his neighborhood and getting rid of the narcotics aspect there, acts as a middleman actively engaged in the business of buying and selling, he says without profit. I think the testimony is important, also, that the defendant has been stated, and it has been argued here, that he has been very frank with you as to his associations here. That is true. It is easy to prove his associations, it is easy to prove the actual fact of sales. It is not easy to prove his intent. But one thing he wasn't frank about, he has told you he was not in narcotics peddling for profit, but he didn't tell you what his business or occupation was; he didn't say what he did to get the money that he lived on. So take a look, then. If he didn't have an occupation perhaps, if he didn't mind associating with narcotic peddlers, if he sees all his friends making money selling narcotics, and if he, evidently, doesn't have any moral scruples against buying and selling narcotics, then why would he not sell narcotics for profit? What does he have against it? Is he frank? He wasn't afraid to buy and sell narcotics with no profit in it, according to his testimony. I think it is plainly obvious that there would have been nothing in his mind against making profits from dope sales, and, in fact, there was nothing in his mind. It would be interesting for me to know whether a single member of the jury would think he had any scruples against committing a crime for a profit, any scruples against selling dope.

218

Well, I think that summarizes the reasons that I think you can find why you should disbelieve him when he says he never before sold narcotics for a profit. Let us say you believe

everything that this man tells you, this twice-convicted felon, and that everything happened exactly in the way Mr. Saldana says it happened. Then I still think you cannot find it to have been entrapment. Entrapment is going to be defined for you by the court, and I believe it will primarily consist of the fact the Government's agents are not the ones that induced this thought into the defendant's mind, and persuaded him
219 from an otherwise innocent course to a course of conduct he admits having engaged in. For instance, supposing a narcotics agent comes to another and asks him, "George, I have got to have narcotics for my wife, she is going through withdrawal, needs a few grains of heroin," and the other says, "No, I will have nothing to do with it." The agents says, "You have got to do it, my wife is just screaming." So the other gets him some heroin. Would you convict a man after he went and got a few grains of heroin for that purpose? You would have thought when the agent did obtain narcotics and thereafter arrested that man it was not so unlawful for that person in that instance, and under those circumstances, to go ahead and buy and sell narcotics.

Let us take the situation here: Mr. Saldana is approached by two persons identified to be dope peddlers who want to buy dope; they say one of the reasons for doing so is a portion of their profits is going to get another dope peddler, his cousin, out of jail. Are you going to send this man back to his neighborhood and have him tell other people: I was acquitted, I merely told them these fellows came up to me, and I told him I sold dope to raise money to get another dope peddler out of jail. Is it lawful for a person to sell the dope to a dope peddler so that their profits from the sale can get another dope peddler out on the streets again? Is that what you are going to
220 determine to be lawful? Because, if you acquit the defendant, that is going to be your determination, and it will create a lot of amusement in this person's neighborhood.

Again, I want to tell you to look at the facts rather than the argument of counsel, of myself or defense counsel. Defense counsel repeatedly stated to you the Government induced this fellow to sell narcotics, the Government did this and that to

corrupt this poor innocent. Look at the facts instead, and see what they did. Everyone, including his client, admits that the sole purpose of going to Mr. Saldana was to arrange an introduction to another man; Saldana refused to make that introduction, instead acted as a middleman; so, was the Government's agent's idea at the time he goes there to corrupt this man? Obviously not, but that is what was argued to you. It was not a fact and Mr. Saldana says it was not a fact. I think you will find even Mr. Saldana testified to no repeated solicitations of him to commit this crime; even if you believe his testimony he was the push-over—"Oh, I was afraid, I thought about it and made a choice," there is hardly persuasion by Government agents to find he was engaged in selling dope.

If I may summarize: I merely want you to do your sworn duty you said you would do in judging the evidence here. If you have some reasonable doubt as to the defendant's innocence, I think you should do your duty and acquit him.

221 On the other hand, if you believe it is unlawful for a person to sell dope so that another dope peddler can get free from jail, then I should think you should so vote and find the defendant, accordingly, guilty. In any event, I hope after your determination here today the verdict that you have arrived at will be one that you will not be ashamed of in the years to come.

COURT'S INSTRUCTIONS

The COURT. Ladies and gentlemen, it is now my duty to instruct you in the law applicable to this case and it is your duty to follow the law as I give it to you. On the other hand, you are the sole judges of the facts. By the finding of the indictment in this case no presumption whatsoever arises to indicate that the defendant is guilty or that he had any connection with or responsibility for the acts charged. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element in the offense and there are several material elements to the offense as charged here. A

mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your own mind when after fairly and impartially considering all the evidence you do not feel satisfied to a moral certainty of the defendant's guilt.

In order that the evidence submitted shall afford
222 proof beyond a reasonable doubt, it must be such as you would act upon in most important and vital matters concerning your own affairs.

A reasonable doubt is not a mere possible or imaginary doubt or bare conjecture, because it is difficult to prove anything to an absolute certainty. You are to consider the strong probabilities of the case and a conviction is justified only when such probabilities exclude all reasonable doubt, as the same has been defined to you and without it being restated or repeated to you again. You are to understand that the requirements that the defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying each and every one of the other instructions.

In judging the evidence you are to give it reasonable and a fair construction, and you are not authorized because of any feeling of sympathy or bias to apply a strange construction, that is one that is unreasonable in order to justify a certain verdict, when were it not for such feeling or bias you would reach a contrary conclusion.

Whenever, after a careful consideration of all the evidence your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is reasonable doubt as to whether or not the evidence is so
223 balanced, then you must adopt the conclusion of innocence.

You are the sole judges of the credibility and the weight which is to be given to the evidence which has been produced and the testimony given by the witnesses in this case. Every witness is presumed to speak the truth, but this presumption, however, may be repelled by the manner in which the witness testifies, the character of his testimony, or by evidence affecting his character for truth, honesty and integrity, or by his motives, or by contradictory evidence, or evidence of a previous conviction of a felony.

Now, evidence of a defendant's previous conviction of a felony is to be considered by you only insofar as it affects the credibility of the witness and must not be considered as evidence of guilt of the offense which is charged against the defendant in this case.

In judging the credibility of the witnesses in this case you may believe the whole or any part of the evidence of any witness and you may disbelieve the whole or any part of it, as may be dictated to you in your judgment as reasonable men and women.

You should carefully scrutinize the testimony given, and in so doing, consider all the circumstances under which any witness is testifying, his demeanor, the manner while on the stand, intelligence, relation to the Government, or the
224 defendant, the manner in which he or she might be affected by the verdict and the extent of contradiction or corroboration or by other evidence, if any, in any matter that tends reasonably in the light of your own experience as reasonable men and women to shed light upon the credibility and the truth of the testimony of each witness.

The defendant has offered himself as a witness and has testified in this case and having done so you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness.

An indictment is but a formal method of accusing a defendant of a crime and it is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eye witness, and the other is circumstantial evidence. The proof of a chain of circumstances pointing to the commission of an offense or the existence of a fact. As a general rule, the law makes no difference between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. You are not limited

in your consideration of the evidence to the bald expres-
225 sions of the witnesses of other direct testimony, but you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your own experience as reasonable men and women.

An inference is a deduction or conclusion which reason and common sense leads the jury to draw from facts which have been proved. A presumption is an inference which the law requires the jury to make from particular facts in the absence of convincing evidence to the contrary. Unless and until outweighed by evidence to the contrary or by other presumptions the law presumes that a person is innocent of a crime or wrong, that a witness speaks the truth, that official duty has been regularly performed, that private transactions have been fair and regular, that the ordinary course of business has been followed, that things have happened according to the ordinary course of nature, and the ordinary habits of life, and that the law has been obeyed. These presumptions continue in effect until overcome and outweighed by evidence to the contrary, and a presumption may also be overcome by other presumption or by an inference; but unless outweighed, the jury are bound to find in accordance with a presumption.

In every crime there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

226 The indictment in this case, or rather, the section of the code under which this indictment is brought, Section 124 of Title 21 of the United States Code, which in its applicable part provides as follows:

> Whoever fraudulently or knowingly sells or in any manner facilitates the sale of any narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law shall be guilty of an offense.

The law prescribes a penalty with which you are not to be concerned, because in the event you find the defendant guilty

the responsibility for imposition of punishment rests solely upon the shoulders of the judge.

The indictment here is in four counts as it stands now, Counts II, III, IV and V.

Count II charges that on or about April 28th in this County, District and Division the defendants Albert Arroyo Palomino and Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan of 1 ounce, 423 grains of heroin, a narcotic drug, which as defendants then and there well knew had been imported into the United States contrary to law.

Count III charges on or about May 7, 1958, in this County,
District and Division, the same two persons knowingly
227 and unlawfully sold and facilitated the sale to Jayme
Licuanan, 1 ounce, 32 grains of heroin, a narcotic drug, which as the defendants then and there well knew had been imported into the United States contrary to law.

The third one, which is Count IV, charges that on or about May 13th, in this District and Division, the same two persons knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan of 1 ounce, 7 grains of heroin, a narcotic drug, which as the defendants then and there well knew had been imported into the United States contrary to law.

And the last one charges that on or about May 21st in this County, District and Division, the defendants Albert Palomino and Leonard Saldana knowingly and unlawfully sold and facilitated the sale to Jayme Licuanan and Victor Segura of 10 ounces, 339 grains of heroin, a narcotic drug, which as the defendants then and there well knew had been imported into the United States contrary to law.

As I previously advised you at the outset of the trial, the indictment was read to you and it contained Count I, which is the conspiracy count. That count has been disposed of other than by a verdict of the jury, and it will not be before you and it will not be necessary for you to consider it. There remain these four counts in that two persons, this defendant
and another person is charged in each count. You are
228 to give no consideration as to whether or not the other person is or is not guilty because he is not on trial before

you and the only person on trial before you is the defendant Saldana, and your only determination is to determine whether or not he, himself, was guilty, and he may be found guilty regardless of the guilt or innocence of the other person.

Now, there are several elements to each one of these offenses. As I indicated before, each of them must be proved beyond a reasonable doubt and to a moral certainty. They are, No. 1, the substance must be a narcotic drug. As to this element, Section 171-A of Title 21, United States Code provides in part:

> That the words "narcotic drugs" mean opium or any compound derivative or preparation of opium.

You may take judicial notice that heroin is a derivative of morphine, morphine is a derivative of opium, heroin is, therefore, a narcotic drug under the law.

The second, the defendant must, in fact, have sold or facilitated the sale of the heroin as charged in Counts II, III, IV and V of the indictment. The third, all of the acts done by the defendant, if you find they were done, must be so proven to have been done knowingly.

Now, the purpose of using the word "knowingly" is to make sure no one will be convicted of an act done because of mistake or inadvertence, or other innocent reasons.

229 And, fourth, the narcotic drug must have been imported or brought into the United States contrary to law, and the defendant must know it.

As to this element, Section 174 of Title 21 of the United States Code provides in its material part that:

> Whenever on trial for a violation of this statute the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

The statute just read does not change the fundamental rule that the defendant is presumed innocent until proven guilty beyond a reasonable doubt, nor does it impose upon the defendant the burden of producing proof that the narcotic drug

was lawfully imported or brought in, or any other evidence at all, for that matter.

As previously stated, the burden is always upon the prosecution to prove guilt and all the elements of it beyond a reasonable doubt. What this statute does do is to create an inference in favor of the United States. If you, the jury, should find from the evidence beyond reasonable doubt and to a moral certainty, that there was possession, as that term will be defined to you, on the part of the defendant as to each respective count in which he is charged, such
230 possession permits, but does not compel you to draw the inference that the narcotic drug was imported or brought into the United States contrary to law, and that the defendant knew it. Whether to draw that inference or the contrary inference that the narcotic drug was not imported must be decided as a question of fact from a consideration of the whole evidence.

In connection with any explanation the defendant may choose to offer for his possession of a narcotic drug, you are reminded that in the exercise of constitutional right, the accused may not testify. He did testify in this case, but possession may be explained through his testimony or through other circumstances and other evidence independent of the testimony of the accused. In order for the Government to get the benefit of the presumption above named, it is necessary for them to prove that the defendant, on or about the dates of each of the alleged sales, had possession of the narcotic drug in question.

In that connection, the law recognizes two kinds of possession, actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time has then an actual possession; but a person who, although not in actual possession, knowingly has the power at a given time to exercise dominion or control over a thing is then in constructive possession of it.

231 The law also recognizes that the possession may be sole or joint. If one person alone has actual possession or constructive possession of a thing, possession then is

sole. If two or more persons share actual or constructive possession of it, possession is joint.

If you find from the evidence beyond a reasonable doubt that the accused either alone or jointly with others had actual or constructive possession of the narcotic as described in the indictment, then you may find that such narcotic drug was in the possession of the accused within the meaning of the word "possession" as used in these instructions.

There is the additional element; the defendant must have intended to do that which he in fact did do. Specific intent with respect to the charge included here must be proved beyond a reasonable doubt. Specific intent, as the term suggests, requires more than a mere general intent to engage in certain conduct. A person who knowingly does an act which the law forbids or knowingly fails to do an act which the law requires, intending with evil motive or bad purpose to either disobey or disregard the law, may be found to act with specific intent. An act or failure to act is done knowingly if done voluntarily and purposely and not because of a mistake or inadvertence or other innocent reason.

Intent may be proved by circumstantial evidence, and while witnesses may see and hear and thus be able to give
232 direct evidence of what a defendant does, or a person does or fails to do, there can be no eye witness account of the state of mind with which the acts are done or committed, and it can rarely be established by any other means than circumstantial evidence.

In this case the defendant has raised the question of entrapment. In that connection, you are instructed that the accused here offers the defense of unlawful entrapment as to each crime charged in the indictment, as to each of the counts. The law recognizes two kinds of entrapment, unlawful entrapment and lawful entrapment. When a person has had no previous intent or purpose to violate the law but is induced or persuaded by law enforcement officers to commit a crime, he is entitled to the defense of unlawful entrapment, because the law as a matter of policy forbids conviction in such a case. On the other hand, where a person already has the willingness and readiness

to break the law the mere fact that the Government agent provides what appears to be a favorable opportunity to break the law is no defense, but it is lawful entrapment.

When, for instance, the Government has reasonable grounds for believing a person is engaged in illicit sale of narcotics, it is not unlawful entrapment for a Government agent to pretend to be someone else and to offer either directly or through
233 an informer or other decoy to purchase narcotics from such suspected persons.

If, then, you the jury should find from the evidence that before anything at all occurred respecting the alleged offense involved in this case, the accused was ready and willing to commit crimes such as those charged in the indictment whenever opportunity was offered, and the Government merely offered the opportunity, the accused is not entitled to the defense of unlawful entrapment. If, on the other hand, the jury should find that the accused had no previous intent or purpose to commit any offense of the character here charged, and did so only because he was induced or persuaded by some agent of the Government, then the prosecution has seduced an innocent person, and the defense of unlawful entrapment is a good defense and the jury should acquit the accused.

You must consider the defense of entrapment as to each count of the indictment. It is a question of fact to be decided by you from all the evidence in the case.

You are instructed to totally disregard any remarks made by the United States Attorney that the life or safety of any person might be put in jeopardy if a name is disclosed.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question which depends upon
234 evidence presented to them for the exercise of their judgment. You are expected to use your good sense, to consider the evidence for the purpose only for which it was admitted, and in the light of your knowledge and the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that

if no such doubt remains, the Government is entitled to the verdict.

The jury are expected to agree upon a verdict where you can conscientiously do so. You are expected to consult with one another in the jury room, and any juror should not hesitate to change or abandon his point of view if convinced his point of view is erroneous. In determining what your verdict shall be you are to consider only the evidence before you in the light of your experience. Any testimony as to which objection has been sustained and any testimony ordered stricken must be wholly left out of your argument and disregarded.

Any opinion of the judge of the guilt or innocence of the defendant if directly or inferentially expressed in these instructions, or otherwise at all during the trial, is not binding upon you, for, as stated at the beginning of these instructions to you, the jury, exclusively belongs the duty to determine
235 the facts, but the law you must accept from the court as correctly declared in these instructions.

You will retire to the jury room and select one of your members as foreman, and when all twelve of you have agreed upon a verdict, the clerk has prepared a blank form of verdict which the foreman will fill in the blanks, sign his name and date it, and the twelve of you will return to this courtroom. It will be necessary during the period of your deliberations you be kept together and not be separated, and that you do not permit any person to speak to you, or speak to anyone else, except to me, the judge, and then only through the bailiff.

The clerk will swear the bailiff.

Are there any other objections?

Mr. REINHARDT. No, your Honor.

The COURT. The exception is the one which you——

Mr. REINHARDT. I have only made——

The COURT. —which you have made on the one instruction?

Mr. REINHARDT. Yes, your Honor.

The COURT. Very well.

Send the exhibits up. Are they all there, including the letter?

The CLERK. Yes, your Honor.

The COURT. The alternate is excused.

(The bailiff was sworn to take charge of the jury and the jury retired to deliberations at 11:39 o'clock a.m.)

236 (At 2:27 o'clock p.m., the jury returned to the courtroom.)

The COURT. United States versus Saldana, No. 26,878. The record will show the defendant is present in person and by counsel, and the jury is present, and each one in his or her place.

Ladies and gentlemen of the jury, have you arrived at a verdict?

The FOREMAN. We have.

The COURT. Will the foreman hand the verdict to the bailiff? The clerk will read the verdict.

JURY VERDICT

WE, THE JURY, in the above entitled case, find the defendant LEONARD SALDANA guilty as charged in Count II of the Indictment, guilty as charged in Count III of the Indictment, guilty as charged in Count IV of the Indictment, and guilty as charged in Count V of the Indictment.

237 (S) BYRON H. DAWSON,
Foreman of the Jury.

Dated: This 7th day of August, 1958.

Is that your true verdict, so say you one and all?

JURORS. Yes.

The CLERK. Mr. Reinhardt, do you wish the jury polled?

Mr. REINHARDT. Yes.

The CLERK. Mr. Robert C. Griffin, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror GRIFFIN. Yes.

The CLERK. Mr. Bryon H. Dawson, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror DAWSON. Yes.

The CLERK. Corrine D. Bury, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror BURY. Yes.

The CLERK. Cecelia H. Bishkow, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror BISHKOW. Yes.

The CLERK. Patsy O. Montgomery, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror MONTGOMERY. Yes.

The CLERK. Hershel W. Sears, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror SEARS. Yes.

238 The CLERK. Mr. William J. Carsten, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror CARSTEN. Yes.

The CLERK. Quama M. Yagusak, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror YAGUSAK. Yes.

The CLERK. Rose Woodall, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror WOODALL. Yes.

The CLERK. Mildred Franklin, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror FRANKLIN. Yes.

The CLERK. James L. Cass, is it your true verdict that the defendant Leonard Saldana is guilty as charged?

Juror CASS. Yes.

The CLERK. John O. Horn, is it [illegible]ur true verdict that the defendant Leonard Saldana is g[illegible]y as charged?

Juror HORN. Yes.

The COURT. The clerk will [illegible]rd the verdict and judgment of guilty as to each of the f[illegible] counts.

Ladies and gentlemen o[illegible]e jury, thank you very much. You are excused un[illegible]otified.

239 [Clerk's Certific[illegible] to foregoing transcript omitted in printing.]

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